

Hearing of The  
SENATE FACT FINDING COMMITTEE ON WATER  
CALIFORNIA STATE LEGISLATURE

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Held In  
State Capitol  
Sacramento, California

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Friday and Tuesday  
February 10 and 14, 1961

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Subject: Analyses of the Water Delivery Contract  
between the State of California and the  
Metropolitan Water District of Southern  
California; *hearings*

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A P P E A R A N C E S

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FRIDAY

Senator Stephen P. Teale, Chairman	Senator Carl L. Christensen
Senator James A. Cobey	Senator Hugh P. Donnelly
Senator George Miller, Jr.	Senator John A. Murdy, Jr.
Senator Ed. C. Johnson	Senator J. Howard Williams
Senator Richard J. Dolwig	Senator Stanford C. Shaw
	Senator Waverly Jack Slattery

TUESDAY

Senator Stephen P. Teale, Chairman	Senator Carl L. Christensen
Senator James A. Cobey	Senator Hugh P. Donnelly
Senator George Miller, Jr.	Senator John A. Murdy, Jr.
Senator Ed. C. Johnson	Senator Stanford C. Shaw
Senator Richard J. Dolwig	Senator Waverly Jack Slattery
	Senator Edwin J. Regan

Also Present: Senator Richard Richards



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Friday, February 10, 1961, 10:00 O'clock, A.M.

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CHAIRMAN TEALE: Ladies and Gentlemen, will the meeting please come to order. This is a hearing of the Senate Fact Finding Committee on Water Resources. Our meeting today was called to receive explanations of the water delivery contract between the State Department of Water Resources and the Metropolitan Water District of Southern California by officials of those two agencies. ✓

This contract is a highly important document and a highly complex one. The typewritten version before us runs to 112 pages. For the members of the Committee a copy of the contract appears in the first section of the book before you. Many of these pages are concerned with the repayment of the cost of the State Water Facilities, what we used to call the Feather River Project. This repayment, of course, comes from contracting agencies and ultimately from the individual users of project services and probably in some cases from individual taxpayers within the project service area.

But these repayment provisions are not, for the most part, expressed in dollars-and-cents terms. Rather they are set up in terms of proportions of a total system cost that still is to be determined. For examples of how complex this approach can become I refer anyone who has a copy of the contract to the algebraic formulas on page 22/3 and on page 30/1. They reach just about across the page.

This contract is the first one signed for delivery of water from the system still to be built. And it calls for delivery of over one-third of the water the system will develop. It sets many terms and conditions that will have to be included in contracts with other user agencies. For instance, a condition is written into this contract that agricultural deliveries will have to be cut up to 50 per cent in a short water year before any reductions can be made in deliveries for municipal use.

That is a fixed condition. It is not subject to negotiation in discussions with other potential contractors. There are other provisions, especially in the repayments sections of this contract, which are taken out of the realm of negotiation for other contracts.

This contract will not be effective until 91 days after the present legislative session is adjourned. I was one of those who asked for such a provision. It seemed to me that both the Legislature and the potential contractors other than the Metropolitan should have a chance to review it before its terms became effective.

Furthermore, the Metropolitan can cancel this contract if legislation passed at this session is in conflict with any of the contract terms -- in the opinion of the Metropolitan.

So it is apparent that the Legislature should be aware of the terms of this contract and should gain some understanding of its implications. That is the purpose of this hearing, to obtain information from those best qualified to furnish it.

I would like to introduce the members of the Committee who are sitting here today. On my far left is Senator J. Howard Williams of Tulare County. Next to him is Senator Carl Christensen from Humboldt, Senator Richard Dolwig from San Mateo County, Ed Johnson from Yuba and Sutter Counties, Hugh Donnelly from Stanislaus County, and on my right is Senator John Murdy, the Vice-Chairman of this Committee from Orange County. I am Senator Teale from Calaveras and Tuolumne and Mariposa Counties.

Our first witness is B. Abbott Goldberg, Deputy Director of the Department of Water Resources who is going to explain the understanding that the Department of Water Resources has of this contract.

I would like to say before we start that I would like the Committee to follow the same policy that we have in the past, that of withholding questions until the witness has finished his testimony so that we do not interrupt the continuity of his thoughts and we do not take time in answering questions which he probably will be answering later on in his testimony. I would like to introduce also Senator Stanford C. Shaw from San Bernardino County.

Mr. Goldberg.

MR. GOLDBERG: Thank you, Mr. Chairman and Members of the Committee. I regret this morning the absence of Mr. William E. Warne, the Director of the Department, who sought to be here but is unavoidably detained in Washington on business. I have with me this morning three other witnesses

from the Department. On your right is Mr. Porter A. Towner, Chief Counsel of the Department, and on your left two men, Mr. William Berry, Jr., who is the actual draftsman of the contract, and Mr. Robin Reynolds who is Chief of the Police and Program Office of the Department of Water Resources and under the direction of the former Director, Mr. Harvey Banks, was responsible for the engineering phases of the contract.

CHAIRMAN TEALE: Pardon me, Mr. Goldberg, before we start I would like to acknowledge the presence of Mr. Banks in the audience and we welcome any suggestion he might have at a later date.

MR. GOLDBERG: Now that Mr. Banks' presence has been noted, I must remind the Committee that I have been Deputy Director of the Department for a very few weeks and did not participate in the drafting or negotiation of this contract. However, I did participate very actively in the preparation of our answers to the Committee's questions and if the Committee is dissatisfied with those answers, I'm afraid I'll have to bear the responsibility.

CHAIRMAN TEALE: I would like also one more interruption. Is there any objection if photographers take pictures during the hearing either of the witnesses or the Committee?

MR. GOLDBERG: No objection by us if it doesn't disturb the Committee.

CHAIRMAN TEALE: If there is no objection, then



it will be permitted.

MR. GOLDBERG: The lengthy document which we have presented the Committee consists of four parts. The first part is the contract itself followed by an equally lengthy analysis of the contract, followed by the Department answers to the Committee questions, and way at the end is a fourth part, very brief, a short bibliography of published materials on the Delta Pooling Concept.

I would like as part of my statement to read the introduction to the analysis of the contract and then read our answers to the Committee's questions.

The introduction to the analysis appears on the first page number 1/1. It is entitled "Analysis of Contract Between The State of California Department of Water Resources and The Metropolitan Water District of Southern California for a Water Supply, Executed November 4, 1960," and reads:

"The contract between the State and the Metropolitan Water District of Southern California was drafted in conformity with the California Water Resources Development Bond Act (Water Code Secs. 12930-12942), the Central Valley Project Act (Water Code Secs. 11100-11855), and the 'Contracting Principles for Water Service Contracts under the California Water Resources Development System' announced by Governor Brown on January 20, 1960. These principles were presented to this Committee about a year ago (Cal. State Senate Fact Finding Committee on Water Resources, Partial Report,

'Contracts, Financing, Cost Allocations for State Water Development 51-53 (March, 1960)).' They are derived from the 'utility theory' stated in the Governor's Water Message of January 22, 1959, to the Legislature?

"Many of the principles now applicable to the operation of utilities should guide us in the development of our state water resources. Thus, we should recognize our obligation to insure that water will be available to meet the proper demands of every part of the State. As in the case of a utility, we should be able to enlarge our facilities to bring more water into the delta pool and recover the cost from the system as a whole. Just as the first man to get a telephone does not enjoy a lower rate, so those who are first served by state water projects should not have a privileged status.' (Cal. Sen. Jour. 224-25 (1959)).

"The contract is particularly significant for two reasons: (1) Since it is with the State's largest customer, the quantities of water and the liabilities incurred are very large. (2) The contract is the first one executed by the State in accordance with the principles referred to above and will set a precedent affecting future similar contracts. The effective date, therefore, was expressly postponed to give the Legislature an opportunity to review the contract (Article 2).

"The essence of the contract is: (1) The State,



barring the operation of causes beyond its control (Article 18(b)) and subject to availability of funds (Article 6 (c)), undertakes to make water available to the District (Article 6(b)). (2) The District undertakes: (a) to pay for the water (Article 22), and (b) for the transportation facilities necessary to deliver the water to it (Article 23).

"The bulk of the contract concerns the practical details necessary to implement these simple propositions. For example, shorn of its formidable algebraic trappings, the formula in Article 22(c) says that the rate per acre-foot which the District will pay for available water is the cost of making the water available divided by the amount available. The complexity is due, in large part, to the fact that the actual figures used in working out the rate must first be based on estimates and thereafter must be recomputed annually to reflect actual costs including the cost of borrowed funds (Article 22(b)). This recomputation is necessary to insure the State that it will recover its reimbursable expenditures, i.e., that the risk that costs, including interest, may be underestimated, is borne by the District. Thus the formula implements the contracting principles announced by the Governor and recommended by this Committee (Partial Report etc. of March 1960, supra, 9, 51). Similarly, the recomputation of costs will insure that the District pays its share of the cost of additional facilities necessary to maintain the minimum project yield (Article 22(e)), thus recognizing that the District has not

secured a priority or water right or right to a preferential price simply because it is the first contractor (Partial Report, etc. of March 1960, supra, 9-10, 52).

Other examples of how the contract follows the principles recommended by this Committee appear from the fact that it makes no distinction in price between agricultural and municipal water (Partial Report etc. of March 1960, supra 10; accord, 26 Assembly Interim Committee Reports No. 1 Economic and Financial Policies For State Water Projects, 5, 51 (February 1960)), and from the fact that it assumes the complete return, with full interest, of all funds allocated to reimbursable purposes (Articles 1(t), 22(a), 23; Partial Report, etc. of March 1960, supra 9, 51; 26 Assembly Interim Reports No. 1, supra, 5, 51). More examples will be pointed out in the detailed analysis which follows."

I would now like to turn to our answers to the Committee's questions which is the third section of the document.

CHAIRMAN TEALE: The answers to the questions Mr. Goldberg refers are found following the second-to-the-last yellow sheet towards the back of the book. The first yellow sheet at the back sets aside the bibliography and the next yellow sheet is at the beginning of the answers.

MR. GOLDBERG: The Committee's first question was this:

Question 1. What is the rationale of including San Luis Dam and the aqueduct from the Delta to the dam in the

conservation facilities for the purpose of cost allocation?  
(Page 1/3 of contract)

Our answer is: San Luis Dam and Reservoir and an allocated portion of the works necessary to fill the reservoir are conservation facilities because their function is to save flood flows which would otherwise escape through the Delta. Although this function could have been served physically by storage above, rather than below, the Delta, it is served more economically at the San Luis site below the Delta. Assuming that the function was to be served by building more storage at Oroville, there would be no argument that project customers between Oroville and the Delta would have to pay as much for conservation of water (the Delta Water Charge) as the users below the Delta. Thus when the cost of conserving water is decreased by the economies attendant on construction of San Luis, it seems only fair that the benefit of these savings be apportioned among all project customers rather than made the exclusive perquisite of the customers above the Delta.

It has been said elsewhere that charging users upstream from the Delta on a basis which includes the cost of San Luis is to charge on a basis which has "no relationship to the service they get" (26 Assembly Interim Committee Report No. 2., The Delta Pool, 20, 24 (Jan. 1960)). It is suggested that this statement misconceives the nature of the service rendered. The purpose of the conservation facilities of the project is to provide a firm yield at the Delta, and

the service is the opportunity to participate in that yield. San Luis is as necessary to that yield as is Oroville for its prevents peaking demands on Oroville which would otherwise deplete its storage more rapidly. Because all project customers share in the total yield, either by taking water from the Delta or by preventing water from reaching the Delta, they all receive the same service and should pay the same rate.

The allocation in the contract is in accord with the Governor's Contracting Principles and the Delta Pooling Concept which was endorsed by this Committee (Senate Fact Finding Committee on Water Resources, Partial Report, Contracts, Financing, Cost Allocations for State Water Development, 9 par. 3, 52 par. 5 (March 1960)). It carries out an essential part of the utility concept, i.e., that the rights of a project customer are to equal service at equal rates based on the costs of the total conservation system. The equal rate is apparent. The equal service is the right to share in a total supply which would not exist if San Luis were eliminated or which would be more expensive if the same storage were provided elsewhere. Sharing costs and savings on less than the basis of the total conservation system would seem, logically, to lead to a system of priorities and individual rights in parts of the system which this Committee has already disapproved (Partial Report supra 9-10 par. 4, 16).

Finally, it should be noted that the Delta Pooling Concept, as applied in the contract, does not necessarily



mean that all upstream users will pay more than they would pay on a basis which allocated to them their share of individual conservation facilities. Some, i.e. in the Upper Feather River, will pay less. (26 Assembly Interim Committee Reports No. 2, (supra 20 n. 15)).

SENATOR DOLWIG: Mr. Chairman, may I interrupt at this point? Are we going to be permitted to ask questions after each answer or are we going to have to wait until--

CHAIRMAN TEALE: I discussed this with Mr. Goldberg. He said many of the questions which will arise are answered in later questions so I am going to ask we hold our questions.

SENATOR DOLWIG: All right.

MR. GOLDBERG: Question 1(a). What would be the additional cost to users in the San Joaquin Valley and Southern California if these facilities were included in the "transportation facilities" instead?

If the conservation facilities south of the Delta (i.e., the allocated portion of Pumping Plant No. 1, aqueduct to San Luis, San Luis Forebay and Pumping Plant No. 2, and all of San Luis Dam and Reservoir) were considered to be transportation facilities and the Transportation Charges included them, the Transportation Charges would be increased and the Delta Water Charge would be decreased.

It is estimated that the capital costs to be returned by the Transportation Charge, the basis of the capital cost

component, would be increased by \$115,000,000, from \$1,030,000,000 to \$1,145,000,000. Both the minimum and the variable operation, maintenance, power, and replacement components of the Transportation Charge would also be increased. On the basis of full project operations, it is estimated that the increases in the latter components would be increased by about \$3,800,000 and about \$300,000 respectively, per year, from \$27,300,000 and \$24,400,000 to \$31,100,000 and \$24,700,000.

It also is possible to give an approximate measure of the increased Transportation Charge in dollars per acre-foot. This would be only illustrative since repayment will not be on this basis. In addition, in computing a unit price the capital charges must be combined with the annual operational charges as if repayment were on the same basis. Recognizing the foregoing qualifications, the computed increase in unit price of the Transportation Charge would be \$4.00 per acre-foot.

Questions 1(b). "What would be the reduction in cost to users in the South Bay Aqueduct area? 1(c) The reduction to Delta users? 1(d). The reduction to users upstream from the Delta?"

The reduction in the Delta Water Charge, with removal of the costs of the California Aqueduct allocated to water conservation, would be \$3.20. Assuming for purposes of illustration that the rate under the contract were modified, it would be reduced from \$3.50 to \$0.30 until December 31, 1969 (Article 22(b)).

Question 2. Is there any significance in this connection in the fact that Oroville Dam and related facilities are put in a different subsection of Section 12934 of the Burns-Porter Act than San Luis Dam, which was grouped with the aqueduct facilities?

In our opinion there is no significance, for purposes of cost allocation, in the fact that San Luis Reservoir is described as part of the aqueduct system (Water Code Sec. 12934(d) (2)), rather than as a part of the Oroville Dam (Water Code Sec. 12934(d) (1)). The section is simply a list of facilities partly according to function and partly according to geography. Neither it, nor any other section of the Burns-Porter Act, nor any other section of State law fixes a mode of allocation of reimbursable costs for rate-making purposes.

Question 3. Section 12938 of the Burns-Porter Act authorizes financing and construction of additional facilities "to meet local needs, including, but not restricted to, flood control, and to augment the supplies of water in the Sacramento-San Joaquin Delta..."

Is it contemplated that users of water developed by these additional facilities, who are located between the facilities and the Delta, would pay "cost of service", or would they be charged the adjusted Delta water charge?

If users of water developed by the additional facilities are located within the watershed of the Delta, the contract requires that they pay the Delta Water Charge. The Burns-Porter Act does not fix a policy regarding charges to users



located in watersheds having no hydrologic connection with the Delta and not dependent on the Delta Pool for a water supply, and the Department has not established a policy concerning such charges.

The Delta Water Charge is designed to recover the cost of project conservation facilities, whether initial, additional or supplemental, which are "allocated to the purpose of water conservation in, above and below the Delta" (Articles 22(a), 22(g)). This requirement is based on paragraph 5 of the Governor's Contracting Principles (Sen. Fact Finding Committee on Water Resources Partial Report, supra, 52, 9 par. 3 (March 1960)). We interpret it to include only those areas within the watershed of the Delta.

The reference in the question to users "between the facilities and the Delta" can cover two classes of users: (1) those in the watershed of the Delta; and (2) those outside such watershed e.g. in the watershed of the Eel. As to the first class, the contract requires that they all pay the Delta Water Charge regardless of their location within the watershed because, as explained in our answer to Question 1, they all receive the same service.

As to the second class, the contract, the Governor's Contracting Principles, and the Act are silent, and the Department has made no determination. The absence of a departmental determination is not to be construed as indicating an opinion that such users are not to receive the benefits

or incur the burden, as the case may be, of paying the Delta Water Charge. It means only that the Department has not yet fully analyzed the problem.

Question 4. Since agricultural use is to bear the main burden of reduction in shortage years, could not a price differential to agricultural use be allowed? (Page 1/5)

The question relates to Article 18(a) of the contract, a provision which would become operative only if a critical dry period happened to coincide with a period of full development of all conservation facilities then existing. The probability that such a period will occur is remote. The drought period used in the calculation of project yield is the driest period since records were begun in 1894, and analyses of tree rings indicate that this dry period has not been exceeded in over 200 years.

Until the sum of the annual entitlements approaches the minimum project yield, the probability of a shortage occurring is even more remote.

In estimating the project yield, it was found that Oroville Dam and San Luis Reservoir could be operated to produce an uninterruptable supply of about 3,000,000 acre-feet. By adopting the criteria of the Bureau of Reclamation (Those now in Article 18(a)), it was possible to produce a yield of 4,000,000 acre-feet with a deficiency in but 6 out of 65 years of record. By increasing the yield it was possible to greatly reduce unit costs, because the State will

be selling four instead of three million acre-feet.

The contract does make allowances for differences in initial repayment capacities between agricultural and municipal users (Article 45). Under Article 24(b) capital costs of the aqueduct facilities are allocated among contractors in accordance with the average of their proportionate use of such facilities in terms of maximum entitlements, and of their proportionate use in terms of required capacity. Because proportionately larger aqueduct capacities are required to deliver a specified annual amount of water for agricultural use than are required to deliver the same annual amount for municipal use, this method of cost allocation accords agricultural contractors a decided benefit.

Question 4(a). Would the Metropolitan Water District have to suffer a reduction in deliveries in ratio to agricultural use in its service area?

Yes. It is provided in Article 18(a) that: "the State, shall, before reducing deliveries of project water to all contractors, reduce the delivery of project water to each contractor using such water for agricultural purposes..."

Question 4(b). Would this be computed by the use to which State water was put or the overall agricultural use in the MWD area? How would you determine the use, for agriculture of State water?

Article 18(a) specifies that reductions in deliveries based on agricultural use are not to exceed the stated percentages of "that portion of the contractor's annual entitlement

for the respective year which is to be put to agricultural use as determined by the State". Article 1(n) defines "annual entitlement" to mean "the amount of project water to be made available to a contractor during the respective year . . .". It follows that reductions in deliveries under Article 18(a) would be computed on the basis of state project water used for agricultural purposes rather than overall agricultural use within the District.

The problem in determining the use of state project water for agricultural purposes is primarily a problem of tracing the use of commingled water supplies. Where there is no coming, the problem can be solved by periodic land-use surveys. Where there is commingling, the problem will have to be solved by analyses of available data such as the records of water use and distribution of the distributing agencies within the District.

Question 4(c). As of now, how much in acre-feet would the reduction in all agricultural use amount to in a "50 percent" year?

It is estimated that under full project conditions the reduction in agricultural use in a 50 percent year would amount to 1,010,000 acre-feet annually, or roughly one-quarter of the minimum project yield of 4,000,000 acre-feet. (However, the driest year of record is a 35 percent year. See our answer to question 5(a).)



Question 5. What do your studies show the reduction would be in available water in the driest year or period of history?

Operation studies of project facilities utilizing the historic water supply to the Delta for the period 1921 through 1934, as impaired by estimated future watershed uses, indicate that:

(a) For the driest year of record, 1924, the reduction of the available supply would be 35 percent of the total annual agricultural requirement under maximum project conditions. This reduction would amount to about 700,000 acre-feet.

(b) For the driest consecutive series of years, 1928 through 1934, inclusive, a period of seven years, the reduction in annual agricultural deliveries would aggregate 100 percent of the annual agricultural delivery. These reductions are shown in the following table:

<u>1928</u>	<u>1929</u>	<u>1930</u>	<u>1931</u>	<u>1932</u>	<u>1933</u>	<u>1934</u>	<u>Total</u>
0	25%	0	27%	0	31%	17%	100%

Question 6. Who determines what legislation is inconsistent with terms and conditions of the MWD contract or what legislation would "require changes" in the contract as described in Article 2? (Page 2/1)

The initial determination will be by the State and the District. If they fail to agree, the matter will have to be submitted to a court (Water Code Sec. 12937).

Question 7. Article 4 seems to make the contract perpetual at the option of MWD. Shouldn't there be some cutoff provision in case of radically changed conditions or radically new methods of developing water? (Page 4/1)

The contract provides for an option for continued service as distinguished from a contract renewal provision. The reason for this is the one suggested in the above question: upon termination of the contract the parties will very likely wish to review and revise the entire document in the light of changed conditions and circumstances.

However, Article 4 does guarantee the District the same quantities of water as contained in this contract at no increase in cost. This option for continued service is an integral part of the utility concept under which the state program will operate and is expressly provided for in No. 8 of the Governor's Contracting Principles (Senate Fact Finding Committee on Water Resources, Partial Report, supra, 52 (March 1960)).

Question 7(a). Shouldn't the State have some option as to continuing service?

By the close of the term of this contract, all capital costs of the project facilities will be repaid. Consequently, there is no reason for the State to insist on continuation of service thereafter.

Question 8. Who determines the amount of reduction in deliveries to MWD in the event any constituent agency of MWD

elects to take delivery under separate contract? (Page 7/1,2)

It is not the State's intention to contract with constituent agencies of the District. The reductions under Article 7(c) do not relate to constituent agencies of the District but relate to areas proposed to be served by the District not yet included therein. It is the State's interpretation that it will determine the amount of reductions under Article 7(c). The San Bernardino contract is made express on this point to remove any ambiguities.

Question 9. Would not the cutoff date of December 31, 1963, in Article 8 work against the interests of undeveloped or slowly developing areas who may not, on that date, be able to contract for ultimate needs? (Page 8/1)

The reason for the cutoff date is that the State must know, prior to construction, what customers it will have so that it will not make investments for which it will not be repaid. The existence of the cutoff date may deprive some potential users of the opportunity to delay incurring financial obligations while, in effect, reserving themselves a right to service from the initial project. However, we believe that to deliver water in Southern California by 1972, work must start on the aqueduct about two years before the cutoff date and that by the cutoff date we need final data.

Furthermore, loss of an opportunity to contract for water from the initial features is not an irrevocable loss of the opportunity for service from state projects. We contemplate that the initial project will be followed by a



continuing program of construction of additional facilities, and that the opportunity to contract will recur from time to time.

Question 9(a). Could not this situation affect the feasibility of the project, since MWD is allowed, not required, to pick up surplus?

The financial feasibility of the project would not be affected by the failure of the District to exercise the option. If the District fails to exercise the option, the transportation facilities could be scaled down, and the Delta Water Charge would increase.

Question 9(b). What language in the contract insures that MWD would pick up the allocated costs of delivering whatever surplus water MWD might take?

The next to the last sentence of Article 8:

"Upon the exercise of such option . . . the District shall become obligated and hereby agrees to pay to the State a proportionate share of the costs attributable to such increase . . ."

Question 10. Please give the basis for limiting to 13 percent maximum monthly deliveries for agricultural use. (Article 12/2(b)). 10(a). Is not a larger proportion necessary for some crops? 10(b). Also give the basis of the 11 percent limitation for municipal use. 10(c). What do your studies show are the swings by months for municipal use in a large area?

These questions are interrelated and will be answered together.

Monthly crop irrigation requirements vary widely from crop to crop. However, the monthly agricultural water demands within an area with uniform climatic conditions vary but little. Such variations as may occur reflect the relative differences in acreage devoted to the major crops grown in the area.

Data on average maximum monthly deliveries by percentages for both agricultural and urban uses in the project service area have been obtained or estimated by the department. These data are shown in the following table:

<u>Jan.</u>	<u>Feb.</u>	<u>Mar.</u>	<u>Apr.</u>	<u>May</u>	<u>June</u>	<u>July</u>
Agricultural (projected, San Joaquin Valley)						
0.5	3.0	7.7	7.3	10.2	12.8	19.2
Urban (Actual use in 1959 through 1955 in cities of Alhambra, Burbank, Glendale, Pasadena, and South Pasadena)						
5.3	5.8	6.7	6.9	9.0	10.0	12.4
<hr/>						
<u>Aug.</u>	<u>Sept.</u>	<u>Oct.</u>	<u>Nov.</u>	<u>Dec.</u>	<u>Total</u>	
Agricultural (projected, San Joaquin Valley)						
19.0	13.2	5.1	1.6	0.4	100.0	
Urban (Actual use in 1951 through 1955 in cities of Alhambra, Burbank, Glendale, Pasadena, and South Pasadena)						
11.6	10.6	8.9	6.8	6.0	100.0	

The maximum monthly percentages shown in the months of July and August are somewhat higher than those specified in Article 12(b) of the contract for each type of use. In limiting the maximum monthly deliveries for agricultural use to 18 percent and urban use to 11 percent two factors, not taken into account in computing the foregoing averages, were considered. These factors are: (1) the financial limitations of the program; and (2) the probability that a small reduction in peaking capacity would result in improved water management in the agricultural service areas.

The objective was to provide as great a delivery capability as possible within the limits of the funds available. Capacities for both uses, agricultural and urban, were limited in the contract to monthly delivery capabilities somewhat less than might be required under the possible range of requirements. If any contractor believes that it can not operate within the allowable limits of peaking capacity, Articles 12(b) and 24(d) provide that the specified percentages governing the maximum monthly demand may be revised, subject to approval by the State and subject to advancement to the State, by the contractor, of funds sufficient to cover additional costs.

Question 11. Wasn't there language in an earlier draft to prevent MWD from making outside sales without the State's permission? (Article 15(a) on page 15/1)

Yes. And there is language in the executed contract to prevent the District from making outside sales which either materially impair its financial capacity or put it in competition with the State (Article 15(a)).

Question 12. Does section (a) of Article 16 preclude sales of Class II water? (Page 16/1)

The term "Class II water" is not used in the contract. We assume that it is used here to mean the interim sale of surplus water. (See Cal. Sen. Fact Finding Committee on Water Resources, Partial Report, supra, 9, par. 2 (March 1960)). Sale of such surpluses is permitted under the contract (Article 21).

Question 13. Again, in slowly developing areas as may exist in the San Joaquin Valley isn't the 75 percent requirement in Article 17(d) too restrictive? (Page 17/5)

No. the 75 percent requirement in Article 17(d) will be applied to the entire California Aqueduct. The existing contracts cover more than 70 percent of the total costs of the aqueduct, and present requests for additional water service therefrom will entail obligations covering more than 5 percent of the costs. Accordingly, the application of the 75 percent requirement will not be too restrictive to slowly developing areas. (The requirement is one of the Governor's Contracting Principles. Cal. Sen. Fact Finding Committee on Water Resources, Partial Report, supra, 53 (March 1960).)



Question 13(a). In such a case would not the main aqueduct be held up?

No, for the reasons above stated.

Question 13(b). Does this restriction mean also that construction of Oroville Dam would be delayed until 75 percent of its power is contracted for?

No. As applied to conservation facilities, the 75 percent limitation takes account of estimated power revenues. There is no requirement that power sales contracts be executed in arriving at the 75 percent figure. The 75 percent limitation does not require contracts to sell 75 percent of the power. Rather it requires that estimated power revenues and executed water contracts provide for the recovery of 75 percent of the capital costs of the particular facility. The question also suggests that repayment of 75 percent of the costs of Oroville might have to be assured solely through power revenues. This is not the case, as both estimated power revenues and executed water service contracts are to be counted in reaching the 75 percent repayment figure for conservation facilities, and the sum thereof at this time exceeds the 75 percent limitation.

Question 13(c). Or does No. (3) of the section (d) of Article 17 exempt Oroville Dam from this 75 percent requirement and San Luis as well?

As indicated in our answer to Question 13(b), there will be no delay of Oroville Dam under application of the 75 percent principle. However, the exception stated by Article

17(d)(3) is of importance with respect to the construction of San Luis Dam and Reservoir and does exempt these facilities from the application of the principle.

Question 14. Is not the date of December 31, 1964, in paragraph (e) of Article 17 somewhat early to take care of all contingencies?

Yes. However, the early execution of water service contracts and the early initiation of the actual construction of the aqueduct system is necessary in order that deliveries of water be made to Southern California when needed. If the State is unable to commence construction of the aqueduct facilities, then the affected areas must have time to make other arrangements to assure a continued water supply.

Question 15. Article 17(f)(1) apparently attempts to take care of the contingencies of exhaustion of state funds available under the Burns-Porter Act. It provides for a reduction in the MWD's repayment obligation equal to contributions by MWD for completion of the "transportation facilities". Is the contract clear that the cost of the portion of the facilities financed by MWD contributions is added to total state expenditures on the facilities? In other words, in order to protect the repayment obligations of other contractors, the MWD contributions should not be deducted from amounts the State has spent but should be deducted from the combined total of State and MWD expenditures. Will you describe how the contract meets this problem? (Page 17/6)

Article 17(f)(1) of the contract does make clear that any funds advanced to the State by a contractor to aid in the construction of the aqueduct facilities will be credited against that contractor's payment obligation. The article says nothing to alter the allocation of the capital costs on which the obligation is based. (Article 24).

Question 16. Please give the rationale used in arriving at the provision in Article 18(a) to reduce agricultural deliveries by 50 percent before any reduction is made in municipal deliveries.

Provisions relating to the 50 percent reduction for agricultural uses in time of shortage were not a matter of contract negotiation. The concept involved is one that is fundamental to the planning and operation of the State Water Facilities. It is also fundamental to the planning and operation of the federal Central Valley Project. It is a concept that has been traditional in water law since its beginning and is incorporated in Water Code sec. 106.

The contract executed in May 1960, between the Bureau of Reclamation and the State pertaining to the allocation of water available in the Delta, was based on yield studies using the same "50 percent" requirement. The 50 percent reduction for agricultural uses is the expected maximum based on historical runoff over a 65 year period, and this reduction would rarely occur. (See our answer to questions 4 and 5).



Question 16(a). Should not such municipal uses as watering of lawns, parks, golf courses -- be curtailed before agricultural users take a full 50 percent cut? (Page 18/1)

They should. The use of water for washing cars, filling swimming pools, operating air-conditioners, and excessive bathing should also be curtailed. (Laughter) That suggestion was not included in any spirit of levity. It reflects what actually happened in the City of New York a few years ago. Assuring that such curtailments will be made is partly a problem of policing within the distributing agencies and partly an appeal to the public conscience. No contract can assure compliance with the requirements of common sense and decency.

Question 17. How do you interpret the effect of "area of origin" statutes in Article 18(b)(1) as between large areas of the State? For instance, would service areas in the San Joaquin Valley hold any preference or priority over Southern California. (page 18/2)

The purpose of the references in the contract to rights under the area of origin statutes (Articles 1(bb), 18(b)(1) and 18(c)) was to avoid any inference that the contract was intended to abrogate those rights, whatever they may be, but not to define them. Definition of these rights has been left open for judicial determination (Article 37).

Question 18. The same subparagraph (1) provides for downward adjustments resulting from reduced entitlements. Does this forecase a deficit in repayment totals since no compensating reduction in cost of works is involved?

Article 18(b) provides for the contingency of a permanent reduction in the minimum project yield. Each contractor's annual and maximum annual entitlements will be proportionately reduced so as to spread the permanent reduction equally among all contractors, except to the extent any contractor may have established rights under the area of origin statutes. No adjustment in the contractors' respective financial obligations would occur where the reduction in entitlements has been completely proportionate. Where the reduction in entitlements has not been completely proportionate, the sum of the repayment obligations of all contractors would not change, but the proportions paid by each would change.

Question 19. It is presupposed in subparagraph (c) of Article 18 that the State may deliver water to a contractor in lieu of contractor's development of a water source under a right gained or held under the watershed protection sections. It apparently also is contemplated that the MWD would be compensated for the amount of water so diverted from delivery to MWD. But is not a repayment deficit created in this situation, since the price paid for this diverted water almost surely would be much less than the price charged to MWD.

With the Chairman's permission, I'll ask Mr. Towner to continue the statement if I may.

CHAIRMAN TEALE: Fine.

MR. TOWNER: (Reading) Article 18(c) is directed to the contingency that the State may be required to enter into a contract to honor rights under the Watershed Protection Statutes.

Two physical situations must be distinguished: (1) where the new contractor takes project water without using the transportation facilities; and (2) where it takes project water through the transportation facilities.

In the first case, the new contractor will have to pay the Delta Water Charge (Article 22(a)). In the second case it will have to pay the Delta Water Charge and a Transportation Charge (Articles 23-28).

In neither case will there be a repayment deficit. In the first case, the total amount collected under the Delta Water Charge will remain the same. In the second case, the Transportation Charge to the District will be reduced, but the difference will be made up by the charge paid by the new contractor. The contract contains no provision for reducing the Transportation Charge to the District to compensate for the decreased usefulness of the aqueduct downstream from the new contractor's point of diversion.

The article should not be accepted as an administrative construction of the scope of the Watershed Protection Statutes. It merely provides a mode of dealing with the problem "in the event" (Article 18(c)) that the statutes are construed to cover the situations discussed above.

The practical answer to the question is, however, that the contingency should be avoided by the timely construction of more facilities.

Question 20. Please explain the meaning of subsection (2) of Section (c) of Article 18.

The answer to question 19 presents the situation contemplated in Article 18(c). To help compensate for the reductions in entitlements, of the original contractors resulting from this situation, it seems only fair and equitable that they be allowed to use such unused aqueduct capacity to transport supplies which they may be able to acquire from sources other than the State. Article 18(c)(2) grants to the district this option, subject to two provisos. The first proviso states, in effect, that the capacity required to transport the district's reduced supply of project water plus the capacity used by it to transport nonproject water, shall total no more on a reach by reach basis than the capacities originally allocated to it. This insures that all contractors similarly affected will have an opportunity to exercise this same option. The second proviso reiterates the Bond Act provision requiring legislative approval of any use of the State's facilities to transport water acquired by others in eminent domain proceedings (Water Code sec. 12931).

The option is limited in time to the period prior to the redistribution of costs provided for under Article 18(c)(1), the reason being that any exercise of the option will be taken into account in such redistribution. The purpose of redistributing costs of project transportation facilities is to charge the new contractor with an equitable share of costs incurred prior to its entry into the program and to credit the future payment obligations of the district and other contractors accordingly. However, to the extent that the district continues to make full use of the aqueduct capacity



upon which its past charges were based, there is no basis for requiring the new contractor to pick up a share of those charges or for reducing the district's total payment obligation.

Question 21. What effect on the Delta water charge would the "staged" construction of Oroville Dam have? (Page 22/1)

It has been suggested that Oroville Dam be constructed in two stages which would be (1) a low-level dam to provide flood control storage only, and (2) completion of the dam to maximum height to provide water conservation and power generation storage, as well as flood control storage. Engineering studies of this proposal indicate that the total costs of the two stages exceed the cost of single-staged construction by \$52,000,000. The Delta Water Charge will be adversely affected by these increased expenses for Oroville Dam and by the loss in power revenues during the period between the completions of construction of the single-stage and multistage dams, and would amount to an increase in the Delta Water Charge of about \$1.50 per acre-foot. This is one of the reasons why, in the language of the Governor's Budget Message of January 25, 1961:

"Our plan commits the State to proceed to build the entire high-level project, complete with production facilities.

No staging is contemplated."

Question 21(a). Is it not possible that the method of computing the Delta water charge described in (f) and (g) of Article 22 may result in a rate above the ability to pay of upstream users of project water?

Yes. The Delta Water Charge computed by the method described in Article 22(f) and (g) may result in a rate above the ability of some upstream users to pay; however, this charge would be lower, in

most cases, than the cost per acre-foot to develop local water projects.

Question 21(b). Do you have any suggestions as to what could be done about this?

We have no suggestion as to what can be done, consistent with Governor's Contracting Principles and the recommendations of this Committee, to provide water to users who cannot afford to "return with interest the reimbursable expenditures on the facilities whether made from bond funds by the California Water Fund". (Senate Fact Finding Committee on Water Resources, Partial Report, supra, 9 par. 1, 51, par. 3 (March 1960)).

MR. GOLDBERG: Question 22. Please discuss in as nontechnical language as possible the use of the "present worth" concept in determining the annual amount to be paid by contractors.

Since money has the power to earn more money, a small sum deposited now will accumulate to become in the future a larger sum. The smaller sum is then the "present worth" of the larger sum. In computing the Delta Water Charge, the problem was to determine the smaller sum. The Delta Water Charge is a small charge which, if collected on the basis of each acre-foot of water sold, will accumulate to an amount sufficient to pay all future costs. The future costs consist of estimated debt repayment and interest, and estimated operation, maintenance and replacement costs. The Delta Water Charge is the "present worth" of these future costs. (See generally, Naton Accountants' Handbook 1435 (3d ed. 1943).)

Question 23. In the computation of the transportation charge described in Article 24(b) it appears that a cost allocation midway between maximum annual entitlements and aqueduct capacity is used?

1(a). "Compared to this method what would be the additional charge to the MWD if a straight maximum annual entitlement allocation were used?"

The additional annual charge to Metropolitan Water District, if a straight maximum annual entitlement allocation were used instead of that described in Article 24(b), would increase the transportation capital cost component and the transportation minimum operational cost component charged to the District by about \$680,000 and \$340,000, respectively. There would be no additional costs in the variable operational component charged to the District.

The projected capital transportation costs allocated to the Metropolitan Water District under the provisions of Article 24 total \$735,000,000. With maximum annual entitlements as the sole measure of proportionate use, the allocated capital transportation costs would total \$750,000,000; amounting to a 2.0 percent increase over that provided by the contract.

Question 23(b). Were potential agricultural users consulted when this formula was arrived at in negotiations with Metropolitan Water District?

Agricultural interests were given opportunity for consultations on any and all parts of the Metropolitan contract, from the time that the first draft of contract was released up to the time of contract execution, and their comments and recommendations were solicited throughout this period.

On July 18, 1960, the department presented a draft of proposed contract dated July 15, 1960, to the Assembly Interim Committee on Water at a hearing in Santa Monica. On July 22, 1960, over 100 copies of this draft were transmitted by the Director of Water Resources to "all Water Users' Organizations interested in water service from the California Water Resources Development System".

The above draft incorporated the maximum annual entitlement method of cost allocation. However, that draft in no way constituted a definitive proposal of contract terms, being tentative in form and subject to change. This was made clear to all concerned, both at the committee hearing and in the letters transmitting the draft to interested parties.

The following are excerpts from the department's statement to the committee on July 18:

"Our present thinking is embodied in the form of a draft of contract, dated July 15, 1960, which we have delivered to you. It is not necessarily our final thinking and it should not be construed as such. As drafting and review work progress, changes and revisions will no doubt be necessary, some of them possibly substantial." (Page 1.)

"The repayment section, more than any other part of the contract, is presented in tentative and preliminary form. Studies with respect to basic matters such as cost allocation and the scheduling of repayment are still in progress." (Page 10.)

The letter transmitting the draft to interested agencies stated in part:



"Upon further detailed study, as well as negotiations with interested parties, modifications and additions may be required in the draft. However, we consider that it provides a substantial basis for negotiations and discussions which we believe should be pursued immediately to result in the execution of water service contracts at the earliest possible date."

Contract drafts subsequent to the July 15th draft were specifically directed to the execution of a contract with Metropolitan Water District. On September 16, 1960, copies of a draft of proposed contract with Metropolitan dated September 3, 1960, were sent to all interested agencies, including those in Kern County and other agricultural areas.

Under date of October 25, 1960, a revised draft of the Metropolitan contract dated October 21, 1960, was transmitted to all interested agencies, together with a summary of all substantive changes from the September 3rd draft. It was in this draft that the method of cost allocation was changed from the maximum annual entitlement method to the "average" method adopted in the executed contract. This change was fully explained on pages 4 and 5 of the above summary.

With the exception of a few very minor editorial changes, the October 21st draft was identical to the contract executed on November 4, 1960. Copies of the final contract were transmitted to all interested agencies on November 2nd.

Representatives of Kern County agencies and interests met with the Director of Water Resources just prior to the release of the September 3rd draft. At that time interest was expressed

in the provisions which now constitute Article 45 of the contract. The principal purpose and effect of these provisions as contained in the executed contract is to adequately protect the financial interest of Kern County and potential agricultural contractors in other parts of the State.

In summary, it may be said that potential agricultural water users or their representatives received copies of the State's contract drafts, were fully apprised that such drafts would be subject to change and modification, and were kept informed of the changes and modifications which were made as a result of negotiations. Such users were expressly informed of the adoption of the average method of cost allocation in the summary of contract changes transmitted to them on October 25, 1960.

Question 23(c). "What would be the additional annual charge to all San Joaquin agricultural users if the allocation were based solely on capacity?"

The additional annual charge to all San Joaquin agricultural users would be about \$1,500,00 if the allocation were based solely on capacity. Included in this additional annual charge would be the transportation capital cost component of \$820,000. There would be no additional costs of the variable operational component charged to the San Joaquin agricultural users.

It is estimated that under the provisions of Article 24 the allocated capital transportation costs in the potential project service areas within the San Joaquin Valley would total about \$150,000,000. With maximum delivery capacity as the sole measure of proportionate use, the allocated capital transportation costs

would total \$168,000,000, for an increase of 12.0 percent over that as provided by the contract.

Question 24. Again state your views on the possibility that the potential contractor for "excess capacity" as described in (d) of Article 24 does not have the ability to advance funds for providing the excess capacity. (Page 24/9)

If the contractor cannot advance the funds necessary to construct "excess" or "peaking" capacity, such capacity will not be built. The State cannot finance such capacity. (See our answer to question 10.)

Question 25. In connection with Article 29, what appeal do contractors have if they believe the charges involved have been calculated inaccurately or improperly by the department?

If a contractor disagrees with the manner in which the State has calculated charges, his first recourse is to seek redetermination under Article 29(1) of the contract. If the State does not concur within the ten days there allowed, the contractor must pay the charge on its due date under protest. Thereafter he may continue his efforts to get an adjustment from the Department of Water Resources. If unsuccessful, he may seek judicial relief (Water Code sec. 12937).

CHAIRMAN TEALE: Thank you, Mr. Goldberg. This has been a very thought-provoking presentation, I'm sure. I see a lot of the men have been making notes. I'm going to allow the Reporter a 5-minute break and then we will reconvene and open the matter for questions. (Thereupon a 5-minute recess was taken.)

The meeting will please come to order. I would like to make an announcement on behalf of the Water Department, that if anyone wishes copies of this document we are working from, if they will leave their name with one of the Water Department representatives, they will be available and furnished to them next week. I understand they do not have enough copies today to take care of the requests, but they will make them available.

Secondly, I would like to acknowledge the presence in the front row of a number of interested legislators. I'm sorry that we don't have enough chairs up here to enter into the questioning, but I think we probably have enough questions from members of the Committee to take care of the remaining time between now and lunch. Are there questions from the Committee? Who wants to be first? Senator Dolwig.

SENATOR DOLWIG: Well, Mr. Chairman, I think I had a question relative to Question 17. I notice insofar as your area of origin statement is concerned, the contract avoids any reference to any of the provisions that are going to be a matter for the courts to determine, but I don't think there is an answer to the last part of the question which states, "For instance, would service areas in the San Joaquin Valley hold any preference or priority over Southern California" under the contract? Now, that doesn't necessarily have any reference to the area of origin, and if it does, then to what extent does the contract provide for it? I'm referring to Question 17 on page 18.

MR. GOLDBERG: Senator Dolwig, I'm not aware of any



basis on which the San Joaquin Valley would hold a preference over Southern California or any other part of the State except on some area of origin basis, and whatever area of origin basis there may be for such a preference is not interfered with by the contract.

SENATOR DOLWIG: Is there anything in the contract that would affect any question of area of origin?

MR. GOLDBERG: No, sir.

SENATOR DOLWIG: There is nothing in the contract about it?

MR. GOLDBERG: No, if they have a right under the area of origin statute, that right is protected.

SENATOR DOLWIG: Well, are you saying now that if there are any rights under the area of origin they would have to go to court in order to determine those rights, and if they have any rights which are determined by the court, then what does this do to the contract provision?

MR. GOLDBERG: It doesn't do anything to the contract provisions.

SENATOR DOLWIG: You mean to tell me as far as the contracts are concerned that the courts are not going to be able to interpret this contract in relation to existing contracts?

MR. GOLDBERG: Of course not. What I mean is this, that if an area can establish a right under the area of origin provisions, that right will be honored as far as the contract is concerned.

SENATOR DOLWIG: I see.

MR. GOLDBERG: And the contract makes allowance for

that.

SENATOR DOLWIG: Then, your first statement was not entirely correct?

MR. GOLDBERG: Well, I didn't intend it to be misleading. If I were, please excuse me.

SENATOR DOLWIG: But your position now is that if there are any rights by reason of area of origin and those rights are determined by the courts that then the contract to the extent the court makes its decision would modify the contract and if the court determines by reason of the area of origin that there are priorities, that those priorities would then have to become part of the contract, is that correct?

MR. GOLDBERG: No, sir.

SENATOR DOLWIG: All right, let's have it clarified.

MR. GOLDBERG: Let's take a particular example.

Let's suppose area A some place within the confines of the San Joaquin Valley establishes that it has a right to water delivery in some amount under the area of origin statute. It would have a right under the contract, excuse me, would have a right under the law to buy into the system. It would receive delivery on the same terms as any other customer. What the area of origin statute would do for it would be to protect it against some sort of prior appropriations so that there would be no water for it. It would receive water, but it would pay at the same rates as any other customer and, of course, if it received water and there was not water to serve the balance of the customers, their entitlements

would have to be reduced. That part of the transportation system up to the point where the new customer was coming in would be adjusted but the balance of the transportation system would not.

SENATOR DOLWIG: Well, in other words, if it is established by the courts that there are some prior rights, those rights only go as to the priority. If they would get a greater entitlement of water they would, of course, have to pay the costs that is determined under the contract?

MR. GOLDBERG: Yes.

SENATOR DOLWIG: So the only thing that would be affected that they could get either more or less water depending upon the determination by the court?

MR. GOLDBERG: Right.

CHAIRMAN TEALE: I would like to ask a question on that. By this do you mean the new customer, the man that developed his prior right, he would have to pay if that water were developed by the State or would he have to pay whether it was developed by the State or by himself?

MR. GOLDBERG: The area of origin statute would require him to pay his fair share of the costs.

CHAIRMAN TEALE: Now, let's get down to cases. Suppose we have Merced Irrigation District would be an area of origin or one of those areas in there and they develop their own project and affected the water supply which they cannot do, but suppose they could.

MR. GOLDBERG: If the area of origin statute gave

them the right to come in and take water which has been appropriated for the State's supply, rather than merely impose operational requirements on the State, if they build their own project they would pay their own costs.

CHAIRMAN TEALE: They would not be subject to the Delta water charge for the water, would they?

MR. GOLDBERG: Not if they take it from their own project. The area of origin statutes are operational restrictions on State projects, that is all.

CHAIRMAN TEALE: I see.

SENATOR DOLWIG: I would like to follow that one, Mr. Chairman. Now, let's take the specific example, Mr. Goldberg, and say that on the basis of the court decision that the San Joaquin water users would be entitled to another half a million acre feet of water, now how would that affect the Metropolitan Water District contract? Would you have to change your entire cost basis because this would mean that insofar as the transportation facilities are concerned they would be using part of those transportation facilities and consequently would the cost to Metropolitan Water District be reduced to the amount of revenue that would be coming out of the 500,000 acre feet?

MR. GOLDBERG: The cost to Metropolitan Water District would be changed somewhat. There would be a reallocation of the costs of that portion of the aqueduct up to the point where the new user has cut in. The new user would have to pay a proportionate amount computed the same as for any other user, a proportion of the



of the cost of bringing him water up to that point. Beyond that point the entire cost would still for the remainder of the line, would still remain unmet, and I believe we said in our answer there is no provision in the contract for reimbursing Metropolitan for the fact that part of its aqueduct would thus be rendered useless. The Delta water charge would not change. Metropolitan would pay less under the Delta water charge, but the other users would pay the portion Metropolitan had given up.

SENATOR DOLWIG: Now, taking the same factual situation what would happen insofar as the entitlement of water under the Metropolitan Water District is concerned? Just to reiterate, you have indicated here there would be 4 million acre feet available under the contract. Now, with 500,000 acre feet going to San Joaquin, which was not contemplated by the contract, how would this affect the entitlement under the Metropolitan Water District contract?

MR. GOLDBERG: Well, it would affect the entitlement under the Metropolitan Water District in this fashion, that Metropolitan and other users who were subordinate to the new user's right under the county of origin provision, would have to pro rate the curtailment among themselves.

SENATOR DOLWIG: In other words then the Metropolitan Water District would have to take a lesser amount of entitlement under the contracts than any other contractees that would be under the system?

MR. GOLDBERG: I'm afraid I don't understand the

question. They would take a reduction proportionate to their original entitlement.

SENATOR DOLWIG: Again on the assumption, to be specific, Metropolitan Water District instead of getting their million and a half acre feet, they would then only be able to get one million acre feet of water?

MR. GOLDBERG: Well, it depends how many other customers there were. Instead of getting 1 million 500 thousand they might get 1 million 100 thousand, something of that order, and somebody who is getting the balance of the roughly 300 thousand acre feet available to Southern California would instead of getting 300 thousand, would get maybe 220 thousand.

SENATOR DOLWIG: For the purpose of our discussion here, assume there are no other contractees, that we only have Metropolitan Water District. If there were no other contractors, the entire burden would fall on the Metropolitan Water District. Could you tell us what would happen to the Metropolitan Water District entitlement to water in this period of 1924 up here, this schedule that you gave us here? What would happen to the Metropolitan Water District entitlement? We already have it down to 1 million acre feet under our assumption. Now, what would happen during your dry period?

MR. GOLDBERG: Well, the system set up for proportioning during the dry period has no relation to the exercise of rights under the county of origin statute.

SENATOR DOLWIG: Well, Mr. Goldberg, maybe this is

not a fair question to you. Maybe some other member of your staff ought to answer it.

MR. GOLDBERG: I intended to refer the question to Mr. Reynolds, but I want to point out that I believe that we are departing now from the questions concerning the area of origin statutes, and if we are I would like to say simply this, I think that the question shows the point that we have made in our formal answer, and that is this that the only real solution to this area of origin problem is the construction of more projects. The only way that you are going to get water to everybody who needs it is to build projects so there is enough water to go around. These area of origin statutes, or any system of water rights, is simply a sort of rationing device, a device to make a scarce supply go around. It is not any permanent settlement.

SENATOR DOLWIG: Mr. Goldberg, I appreciate your statement. We have now before us a Metropolitan Water District contract and we are trying to determine what legislation is necessary or is not necessary and I would like to go back to my question which is on the assumption that you have an area of origin problem, and on the assumption that we have made--I think the State is going to be faced with the practical problem of what is going to happen under the Metropolitan Water District contract during dry years similar to the period of 1929 to 1934, and I think this is a practical question that we would like to have an answer to.

MR. GOLDBERG: Excuse me, one moment.

SENATOR DOLWIG: The dry period I am talking about

is on page 9.

MR. GOLDBERG: Well, if you have a dry period, if you are down to a period where Metropolitan use is--I have difficulty with the question, sir, because I take it that the question assumes that Metropolitan would be cut to a million acre feet. Now, of course, such a dry period is conceivable.

SENATOR DOLWIG: Maybe I'm making it complicated. May I simplify it. Let's start out with--I would like to have this explanation insofar as the material on page 9 is concerned. Let's take the contract as it now reads, no assumptions. Now, would you just tell us how much water the Metropolitan Water District would get during a dry period similar to 1928 and 1934 and how much water would be left for the other areas. Let's start out with that base question.

MR. GOLDBERG: Mr. Reynolds tells me that we do not have the actual figures with which to answer such a question, that we will be glad to furnish them to you.

SENATOR DOLWIG: You mean to tell me that Metropolitan Water District didn't ask you this question at the time you entered into the contract?

MR. GOLDBERG: I don't know whether Metropolitan has asked it or not.

SENATOR DOLWIG: You don't have the answer now, but you will get it?

MR. GOLDBERG: We will try to furnish it.

CHAIRMAN TEALE: Senator Williams and then Senator



Richards.

SENATOR WILLIAMS: Mr. Goldberg, let me ask you a question. I'm referring now to page 18, Question No. 17. As I understand your answer to Question 17, the definition of these rights which are referred to in the question there have been left open to judicial determination. Is this correct, that what you are actually saying is that the rights stand as they are at the present time under present law, but there is nothing to preclude anybody from coming in and questioning those rights at any time, isn't that correct?

MR. GOLDBERG: That is right.

SENATOR WILLIAMS: They can do that and they have always been able to do that?

MR. GOLDBERG: Yes, sir.

SENATOR WILLIAMS: One other question I had here. Well, the only reason why you people haven't defined these rights is that they are already defined in the law and you left that entirely as it was?

MR. GOLDBERG: Whatever the law means, the contract says.

SENATOR WILLIAMS: That is all I have at the moment, Senator.

CHAIRMAN TEALE: Senator Cobey.

SENATOR COBEY: Mr. Goldberg, the area of origin and watershed protection rights are statutory rights that exist independent of this contract or any other contract, right?

MR. GOLDBERG: Right.

SENATOR COBEY: And under the statutory definition of the Delta that we now have, that is found in Section 12220 of the Water Code and under the language of Section 11460 of the Watershed Protection Statute, it says: "In the construction and operation by the Department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the Department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein."

That is Section 11460. Now, when you put Section 11460 alongside of Section 12220 of the Water Code, does that not establish that the San Joaquin Valley is an area immediately adjacent to the Delta as defined under the statutory definition of the Delta as an area which can be conveniently supplied with water therefrom and has a prior right to any water in the Delta over Southern California?

MR. GOLDBERG: I would be less than candid with you, Senator, if I said anything but no. I find it difficult to imagine how the southern end of the San Joaquin Valley can be more of an area which can be conveniently served than can Southern California.

SENATOR COBEY: You are ignoring the existence of the Tehachapi Mountains?

MR. GOLDBERG: You can get an aqueduct through them.

It can be conveniently served. That is one of the difficulties with the area of origin statute. I believe that was pointed out in the Attorney General's opinion, is the latitude of these places of area immediately adjacent thereto which can conveniently be served therefrom.

SENATOR COBEY: This becomes, of course, of vital importance to the San Joaquin Valley in view of the priority that this contract with the Metropolitan Water District gives to municipal uses over agricultural uses and also because of the existence of the options that you are fully familiar with.

MR. GOLDBERG: Yes, sir.

SENATOR COBEY: Now, the Department itself has not taken any position yet with respect to what constitutes areas of origin or protected watersheds under these statutes?

MR. GOLDBERG: I would have to refer that question to Mr. Towner.

MR. TOWNER: No, sir.

SENATOR COBEY: When are you going to take such a position?

MR. TOWNER: Well, I don't think it would serve a very useful purpose for the Department to attempt to anticipate all of the situations which may arise and I think that we would be wise to wait until we are faced with a particular situation and deal with it accordingly.

SENATOR COBEY: Well, this becomes of vital importance, Mr. Towner, though to the San Joaquin Valley as to whether

or not we shall try to meet your deadlines which you put in here or not for making contracts for water before the Metropolitan Water District can preempt this entire yield.

MR. TOWNER: Well, I appreciate that, Senator, and as we know, these sections have not been construed by a State court so we don't know exactly what they mean. As Mr. Goldberg pointed out, we were very careful in drafting this contract to provide that whatever the rights are under these statutes, they are not impaired in any way by the contract itself. That was our key consideration and I think we have adequately protected them under the contract. But as we pointed out in our answer to your specific question, we did not attempt to define them and we have not attempted to define them elsewhere.

SENATOR COBEY: Well, as the agency responsible for the development of the State Water Program, don't you think it is incumbent upon this agency to indicate where the various areas of the State stand under the State statutes?

MR. GOLDBERG: Where? They stand, sir, wherever the statutes leave them. Whatever the statutes mean, we will follow them.

SENATOR COBEY: Yes, but wouldn't it be possible to, as is done in bond validation proceedings and so forth, to institute some litigation so that we can get a determination of the rights of these areas?

MR. GOLDBERG: I must answer regretfully it is always possible to institute litigation.



SENATOR COBEY: But at the present time the Department doesn't feel that it has any duty to institute such litigation for the purpose of getting a judicial determination of what these protected areas are?

MR. GOLDBERG: I would recommend against it.

SENATOR COBEY: Why?

CHAIRMAN TEALE: Would you repeat that?

MR. GOLDBERG: I would recommend against instituting such litigation.

SENATOR COBEY: Why?

MR. GOLDBERG: The reason why is this, in the first place we wouldn't know who to sue.

SENATOR COBEY: Well, I have got a few suggested defendants.

MR. GOLDBERG: We might accumulate several million of them, you know.

SENATOR COBEY: Well, I think it is rather important that we know what the pieces of this jig-saw puzzle are before we start to put it together, isn't it?

MR. GOLDBERG: Of course, sir, that is why the project proceeds on the basis of trying to supply water rather than solving the legal problems which are most difficult. If you have enough water you don't have to worry about water rights.

SENATOR COBEY: The solution of these legal problems will probably control the position, for example, that the interests in the San Joaquin Valley will take with respect to what they do about this contract, and since as I understand it your design

studies are based on the assumption that the San Joaquin Valley is going to participate in this water supply through the water facilities to be constructed under the Bond Act in this contract, don't we have to have any resolution of these questions immediately?

MR. GOLDBERG: Excuse me, Senator.

CHAIRMAN TEALE: While the consultation is going on I have an announcement. There is phone call for Mr. W. P. Rowe. If he will contact the sergeant-at-arms here, I'll give him the note.

MR. GOLDBERG: In answer to the first part of your question, yes, the design of the facilities is based on service to large areas in the San Joaquin Valley.

SENATOR COBEY: And my question is how can those large areas decide whether or not they want to participate in the State Water Program until they know what their rights are independent of the State Water Program? I'm referring to the watershed protection statute.

MR. GOLDBERG: Suppose they didn't participate now. If they didn't participate now, we presume the State would build a somewhat smaller aqueduct than it would otherwise build because under our bonding program we can't in large degree build facilities for which we will not get repayment. Then the area of origin decides it wants to come in, the practical answer would be to build new facilities to take care of that area of origin and to spread the burden of the cost of those facilities over the entire system. Now, if the area of origin right is such as to give them a priority which prevents the use of the system, prevents the use of the

initial system, they would have to bear their proportion of the initial system and the Metropolitan Water District would have to pay the balance.

SENATOR COBEY: In other words, a later participation on that basis would be a much more expensive solution of their water problem?

MR. GOLDBERG: Yes, but at least they get a later participation. If you follow the conventional doctrine of water rights, they wouldn't get participation at all, and they get, even though it is more expensive than the initial participation, it is still more likely less expensive than it would be with the new facilities allocated to them alone. They would get some of the savings of the initial construction although not as much as if they participated initially.

SENATOR COBEY: But participation beyond our ability to pay is no participation at all, is it?

MR. GOLDBERG: I refer you to our answer, I think it is to Question 21(b) on page 22, Senator. The hypothesis by which the State program is developed is that there will be full payment with interest of all reimbursable costs, and if that hypothesis is not changed, then there is no room for people who can't pay.

SENATOR COBEY: As I understand it, I can't agree with your conclusion, Mr. Goldberg. We have an opinion from the Legislative Counsel which indicates that this requirement, I think the requirement that you are talking about is embodied in Section 11455 of the Water Code, that this requirement merely says that on

a total basis there must be full repayment, but there is no requirement in 11455 that each participating user must make a full repayment, or class of user.

MR. TOWNER: That is correct, Senator.

MR. GOLDBERG: Yes, that is correct. There is no requirement in the statute. The statute allows a great deal of latitude actually as to the allocation of costs, and allocation of cost among different classes of users, but I'm referring to the Governor's contracting principles and to my understanding of the recommendation of this Committee about a year ago where it says, "Legislation should require that rates for services from the facility be set so as to return with interest the reimbursable expenditures on the facilities, whether made from bond funds or the California Water Fund. The interest rate computed for water fund expenditures should be as nearly as possible the rate paid on money obtained from bond sales."

Elsewhere, I can't find the statement now, but elsewhere the statement is made that--yes, here it is on page 10 of the Committee's report:

"The Committee recommends that capital costs of aqueduct systems be recovered from contractors for water on a basis of proportionate use of facilities necessary to accomplish delivery, calculated within aqueduct reaches. The purpose for which water is to be used should not be a factor in calculating repayment obligations of the agencies contracting for delivery."

CHAIRMAN TEALE: Could I interrupt just a moment?



In the contract it is anticipated that the repayment will be of all funds used with interest or of just the bond funds with interest?

MR. GOLDBERG: Actually, I will answer that on the basis of my opinion, sir, rather than indicating any departmental determination. As I understand it, and I hope Mr. Berry and Mr. Towner and Mr. Reynolds will correct me if I am wrong, as I understand it negotiations were conducted on the basis that there would be full repayment of all funds, California water funds, bond funds and prior funds that have been used.

CHAIRMAN TEALE: With interest?

MR. GOLDBERG: With interest, not only with interest, sir, but a realistic rate of interest, about 4 percent.

CHAIRMAN TEALE: Senator Cobey.

SENATOR COBEY: Mr. Goldberg, you are aware there was a minority report signed by four members of this Committee?

MR. GOLDBERG: Yes, sir.

SENATOR COBEY: Dissenting rather violently from the language you have just read?

MR. GOLDBERG: Yes, sir.

SENATOR COBEY: Now, coming back to the questions that were propounded to you by the Committee Chairman in writing, as I understand it, in this contract you are only allocating a portion of the cost of the San Luis Dam and related facilities to the conservation or Delta water charge?

MR. GOLDBERG: My understanding, and I'll ask Mr.

Reynolds again to check that, is that all of the dam and reservoir behind it are allocated to conservation facilities and a portion of the aqueduct and pumping plant leading to the dam.

SENATOR COBEY: Is that it?

MR. REYNOLDS: Yes, sir, that is it.

SENATOR COBEY: Actually the dam and reservoir and related facilities serve a dual purpose as you stated in your statement. They conserve winter flood flows, but they also act as a regulator for purposes of delivery, don't they? I mean, this is basically a regulatory reservoir, isn't it?

MR. GOLDBERG: I would have to refer to Mr. Reynolds.

MR. REYNOLDS: I believe, sir, our argument would be that it is entirely to conserve water. We make a distinction between regulating water which we see as a very short-term operation, and not allowing water to waste which would ordinarily go to waste, which we think San Luis Reservoir does instead.

SENATOR COBEY: Well, I didn't ask you for your argument, with all due respect, Mr. Reynolds. I asked you what the fact was. Isn't it a fact that essentially these facilities we are talking about serve the same purpose that, shall we say, a small ranch reservoir serves? The farmer doesn't turn his water into his rows without some regulation at the head. What you have got here is a long ditch through the San Joaquin Valley in effect and through the Tehachapi Mountains down to Southern California and it has a limited capacity and you want to regulate the inflow into that ditch, and to regulate the inflow into that ditch you have to have

a reservoir so that you just don't pick it up from the Delta itself, and you have to have this pickup and then by putting it into a regulatory reservoir you can regulate the inflow to that ditch, isn't that what the San Luis Reservoir does, or am I wrong?

MR. REYNOLDS: Yes, it does exactly that.

SENATOR COBEY: But you regard this regulatory function as a conservation function as opposed to a transportation function?

MR. REYNOLDS: I think, sir, we do.

SENATOR COBEY: Now, as I understand it, you regard the upper Feather River dams as part of the conservation facilities at Oroville?

MR. GOLDBERG: Yes, sir.

SENATOR COBEY: Is that on the premise that they regulate the inflow into Oroville and therefore make Oroville Reservoir a more efficient conservation facility?

MR. GOLDBERG: No, my understanding of it is this, that the users up there deplete the Delta just the same as any other users, and what they are really being charged for is the right to deplete the Delta.

SENATOR COBEY: I wasn't asking with that in mind, Mr. Goldberg. I was merely asking whether or not the dams do as a matter of fact, these upstream dams in the upper Feather River Basin, do they increase the efficiency of the Oroville Dam facility as a conservator of water?

MR. GOLDBERG: My understanding was that they did not, but I will have to turn that question over to Mr. Reynolds again.

MR. REYNOLDS: I would say that they might scarcely in an immeasurable amount, but it certainly is not necessary to have them there to operate the larger reservoir.

SENATOR COBEY: I notice in your definitions that you have, however, specifically included them among the initial project conservation facilities as I recall, and you can correct me if I am wrong.

SENATOR RICHARDS: May we have the page?

SENATOR COBEY: Well, I'm looking at the actual contract. It is page 1/2, paragraph (d), sub-paragraph 1. The facilities referred to are these five upstream dams?

MR. REYNOLDS: Yes.

SENATOR COBEY: You do include them as part of the initial project facilities?

MR. REYNOLDS: Yes, sir.

SENATOR COBEY: Why was that done?

MR. GOLDBERG: I would again have to refer to someone who negotiated the contract. I guess it would be for the same reason they were put into the Act. They are specifically named in the Act. This is the portion dealing with the Feather River development. It is not one of the obviously additional facilities like the Eel River.

MR. TOWNER: Senator, I don't know whether I can add too much to this. I think perhaps you should ask the question of Metropolitan Water District when they appear also because as a matter of fact they are being charged with part of the repayment of these facilities. In the negotiations I don't think there was any



question as to whether they should be included, at least not to my recollection.

SENATOR COBEY: The treatment here is inconsistent with the treatment of the San Luis Reservoir which in the Act itself is included as part of the aqueduct facilities which I would interpret to mean transportation facilities.

MR. TOWNER: Well, again, we answered that by saying that the order in the Burns-Porter Act did not seem to be conclusive to us.

MR. GOLDBERG: I think that was Question 2.

SENATOR COBEY: You follow it where you want to and don't where you don't want to.

MR. GOLDBERG: It is Question 2 on page 4 of our statement.

SENATOR COBEY: I mean basically that is it, isn't it, Mr. Goldberg? You followed the order in the Bond Act when you wanted to and you didn't follow it when you didn't want to.

MR. GOLDBERG: No, sir, we tried to make a discrimination as to the functions being served by each facility.

SENATOR COBEY: Well, as I understand your testimony here today you say that upstream dams on the Feather River are not conservation facilities but you have so identified them in the contract.

MR. GOLDBERG: We did not say they are not conservation facilities. Your question is whether they added immeasurably to the efficiency of Oroville. Certainly they provide some conservation but

they are not large enough to affect the operation of Oroville significantly.

SENATOR COBEY: Well, your correction is in order, and as I understand your testimony, you are stating that they are not significant contributors to your, shall we say, Delta water supply facilities, is that right?

MR. REYNOLDS: They do not substantially contribute water for export to the Valley and Southern California. They do serve to serve the water needs of the State service areas in their areas.

SENATOR COBEY: Well, as I see it, Metropolitan Water District in this contract tried to identify that portion of the State's facilities which would be of service to them, isn't that correct? You gentlemen participated in the negotiations.

CHAIRMAN TEALE: Gentlemen, I think we should maybe have a copy of the Act before us. I'm going to recess the hearing until 1:45 and we will have more questions at that time.

(Thereupon the noon recess was taken.)

Friday, February 10, 1961, 1:45 O'clock, P.M.

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CHAIRMAN TEALE: The meeting will please come to order. We will resume where we left off and I think I would like to ask a question or two before we go back to Senator Cobey. Like some other members of the Committee, I have been a little fascinated with this discussion of the conservation works that are determined by the Department in this contract. I would like to turn to page 5 of your answer, the second paragraph, where you say, "The Delta water charge is designed to recover the cost of project conservation facilities, whether initial, additional or supplemental, which are 'allocated to the purpose of water conservation in, above and below the Delta'".

Now, it appears from your testimony here this morning that there have already been included in the conservation works facilities constructed below the dam in the form of the ditch from the Delta to San Luis Forebay and all the works down to the outfall from San Luis are included as conservation works. We'll return to that in a moment. Now, would by the same token, by the same reasoning that you have included these, would terminal reservoirs further down the line also be included as conservation works?

MR. GOLDBERG: My recollection of the contract--I'll ask Mr. Berry to verify this--is that the reservoirs down the line, re-regulating reservoirs, at Perris as an example, are not included as conservation works but are counted as transportation facilities.

CHAIRMAN TEALE: Don't they serve the same purpose?

MR. GOLDBERG: Mr. Reynolds.

MR. REYNOLDS: No, they don't, sir. The aqueduct is built so that it carries water at a constant rate all the time south of about the middle of Kern County. Consequently, it is necessary to have some storage at the end to allow us to meet necessary peak requirements. For example, you may require 12 percent in a month constant flow and there is only 8 percent in a month, and that is the reason for having that reservoir at the end and not calling it part of the conservation facility. It is also necessary to have it in there in case there were an aqueduct break upstream, to give us time to straighten that matter out and still enable us to meet the demands.

CHAIRMAN TEALE: Will you explain to me the difference between that and the function of the San Luis Reservoir?

MR. REYNOLDS: All right, sir, I'll try. First, I would say San Luis and Oroville seem to me to be exactly the same. Each reservoir is filled during the winter months, and each reservoir is emptied somewhat during the remaining part of the year to meet demands during those parts of the year, but each reservoir also carries with it each year a considerable carry-over in storage, thus conserving from wet periods to dry periods a large quantity of water.

CHAIRMAN TEALE: Isn't there a little bit of difference in that you fill San Luis because you are moving that water to a user and you are filling Oroville simply because the water is



coming downhill. You are not pumping it into Oroville. You are conserving water at Oroville.

MR. REYNOLDS: My answer, sir, would be that San Luis just happens to be along the aqueduct route. It would be most desirable perchance to build a Delta reservoir, but since we can't build one there, we found a site close to the Delta and it just happens that the aqueduct to take water to that reservoir can be combined with the aqueduct to carry water further south. If it were nearer the Delta, say on the north side or on the near south side, it may be that the aqueduct to convey water into that reservoir would be separate and distinct from the major conveyance aqueduct that went down south. Is that any help?

CHAIRMAN TEALE: How much capacity are you building into San Luis in terms of years of carry-over?

MR. REYNOLDS: Sir, I'm not really at this moment able to answer that question. I would say at the present time it would not be drawn down to its dead storage level any more than six years in 65 as we have noted in here, but I'll explore that and answer that.

CHAIRMAN TEALE: What would happen to your whole transportation system if you didn't build San Luis Reservoir?

MR. REYNOLDS: It would be sized smaller to accommodate only the yield we could gain from the Delta and from Oroville.

CHAIRMAN TEALE: Well then, isn't it simply a part of your transportation system?

MR. REYNOLDS: No. I don't understand what you have asked me possibly.

CHAIRMAN TEALE: Sometimes I don't understand it either.

MR. REYNOLDS: I would answer by saying again that if San Luis were not built at all, we would have a smaller aqueduct because then we could only meet a demand of say two-thirds or possibly three-quarters of the demand we can meet with the various features we have.

CHAIRMAN TEALE: All right. Then, isn't the reason for building the San Luis Reservoir to perfect your transportation system?

MR. REYNOLDS: No, it isn't. As I say, it just happens it is on the route down there. Even if it were not there, we would have to have the aqueduct still going on south and we would go exactly the same route probably.

CHAIRMAN TEALE: You and I didn't go to the same engineering school. I want to express the feeling of the Committee. We feel a little bit flattered that you have used our report from last year as a basis for so many of your answers, but I would like to point out in page 9 of our report that we recommended also in addition to all these other things you have quoted under recommendation 3, "Legislation is recommended to require that rates set for delivery of water from the system include as separate charges to user agencies the costs of making water available in the Delta and of delivering it beyond the Delta."

Now, I only point this out as an indication that as far as I can see, as far as I understand, the members of this Committee at

least were of the impression from reading and acting on 1106 that from the Tracy pump southward, those facilities would constitute a transportation system. You don't have to comment on that if you don't want to.

SENATOR DOLWIG: Yes, Mr. Chairman, please let him comment on that. I think it would be very interesting to hear him comment.

MR. GOLDBERG: Senator Teale, the problem as we see it is this, the function that that San Luis serves has to be served somewhere. It could have been served by building Oroville even larger than it is, and if it had been so served, then there would be no question that everybody below Oroville would pay his proportionate share of the charge. Now, through a happenstance of nature, a piece of good fortune, it turns out to be possible to serve part of this function of storage at San Luis more economically, and the question comes up, is this economy, this chance economy, to be allocated exclusively to uses above the Delta or is to be spread over all the users of the system. The determination was made in the Governor's contracting policies, and I for one so understood the Committee's recommendation, though when you read it now, I see the ambiguity. The determination was made that it was better to spread the cost, to spread the saving widely just as much as we try to spread the cost.

CHAIRMAN TEALE: What happens when you build Avenal Reservoir and re-distributing system to take off the San Luis Obispo Canal, does that fall in the same category as San Luis?

MR. GOLDBERG: I'll ask Mr. Reynolds to answer that.

MR. REYNOLDS: We have not proposed that a major Avenal Gap Reservoir be built. There is a very small reservoir to take care of fluctuations day by day, possibly even hour by hour, but if a large conservation reservoir were built at Avenal Gap and a reservoir could be built there, I would say it would be treated exactly as the San Luis Reservoir if it enabled us to convey water to it during wet periods and then when we have dry ones it should be charged to conservation.

CHAIRMAN TEALE: What significance is the figure that you quoted in your report, a figure of \$3.50 an acre foot for water at the Delta? Now, is this a figure which you propose to deliver water to these people at? Is this what you are estimating this is going to amount to?

MR. GOLDBERG: Again, I'll ask Mr. Reynolds to answer that. It is my understanding that \$3.50 an acre foot is an interim figure, I think December 31, 1969, until we have an actual cost basis on which to start predicating the Delta water charge and that most likely the Delta water rate will go up for a while after December 31, 1969.

CHAIRMAN TEALE: The reason I ask that is that I understand that in the interim between now and the completion of your conservation works if we deliver water to South Bay or any other consumer, our water will be purchased from the Bureau of Reclamation.

MR. REYNOLDS: Yes, that is true.



CHAIRMAN TEALE: At a figure of approximately \$8.50 an acre foot?

MR. REYNOLDS: An average figure of \$8.50 an acre foot looks to us to be a reasonable estimate of the four or five-year cost of water to the South Bay Aqueduct service area until we have works of our own.

CHAIRMAN TEALE: What features in our works will make our water cheaper than theirs?

MR. REYNOLDS: I would first like to say that I don't think the Federal agencies price their water in the same way we do. They have a rather, I would say, arbitrary price and it may or may not reflect the actual cost as we would figure it. The price we are paying for M and I water for the South Bay Aqueduct service area is more than we feel it would cost us to bring that water up there with our pumping plant number 1 and that is practically all we need to get water out. Then we would no longer need to buy water from the Federal Central Valley Project but can furnish water from our own pumping plant number 1.

CHAIRMAN TEALE: Are we going to have surplus--you are anticipating using their works in the interval.

MR. REYNOLDS: Yes, we would have to. There is no economic other way.

CHAIRMAN TEALE: You figure as soon as you have your own diversion works, then you can divert the water and you are not anticipating that you will have to in the interim period provide for replacement water in the Delta?

MR. REYNOLDS: No, we would buy water from the Federal Central Valley Project as any other agency would.

CHAIRMAN TEALE: I see. We'll return now to Senator Cobey's questioning and then we will go to Senator Richards and Senator Shaw.

SENATOR COBEY: Mr. Goldberg, I think you stated this morning that the aqueduct down the San Joaquin Valley is going to be designed to a capacity for joint municipal and agricultural use and this contract so contemplates?

MR. GOLDBERG: Yes.

SENATOR COBEY: And has the Department made an allocation as between municipal and agricultural use so far as this aqueduct is concerned, because I notice that the annual entitlement under this contract of the Metropolitan Water District is 1 million 500 thousand acre feet. What I wondered was with respect to the 2 million 500 thousand that is left of your minimum yield, where does the Department contemplate that that is going to be used?

MR. GOLDBERG: I think 1 million 800 thousand acre feet is actually contemplated for Southern California at this time and 2 million 200 thousand for the remainder of the aqueduct system.

CHAIRMAN TEALE: Could I interrupt just a moment, Jim? I would like to ask the members of the Committee to limit their questioning to 10 minutes each from this point out because I would like to get Metropolitan on at 3:00 o'clock if we can.

SENATOR COBEY: And then 2 million 200 thousand then,

Mr. Goldberg, is at this point thought of as being primarily agricultural water?

MR. GOLDBERG: I'll ask Mr. Reynolds. My impression is yes.

MR. REYNOLDS: Senator, the 4 million acre feet is divided almost exactly half and half, 1 million 980 thousand M and I and 2 million 020 thousand for agricultural.

SENATOR COBEY: Does the Department now, Mr. Reynolds, have marketing studies that indicate that there is that demand that you have set forth there for the agricultural water at the cost that you have been talking about?

MR. REYNOLDS: Now, you have asked me a number of things. First you have asked me, do our studies indicate there is demand for 4 million acre feet. Our studies indicate there is a demand for 4 million acre feet and that demand will be reached about 1990.

SENATOR COBEY: Have your demand studies been related to price?

MR. REYNOLDS: We have made every effort, we think, that could be made to determine economic demand, in other words, a demand that is generated by a price for water that people can pay.

SENATOR COBEY: So in other words, as I get it, Mr. Reynolds, you are satisfied that there will be a demand at the price that you can offer water under this full repayment of cost principle that you have enunciated--there will be that much agricultural water demand north of the Tehachapies?

MR. REYNOLDS: I feel, Senator, we have done all we can, and I am waiting, possibly like you, to find out what happens now. As you know, we will not know what the demand for water is.

until these service agencies sign a contract. We have one who has-- two, who have, and we expect others will. It might interest you that the talking we have done with the agencies since we signed these two contracts indicate the demands will probably be somewhat heavier, meaning that they will grow at a faster rate.

SENATOR COBEY: Now, Mr. Goldberg, with respect to Water Code Section 106, as I recall you stated that is one of the bases at least or one of the reasons for this priority that this contract establishes in the municipal water over the agricultural water, isn't that correct?

MR. GOLDBERG: Yes. I'm looking for that.

SENATOR COBEY: That is a priority of domestic over irrigation and I was under the impression that was based on the fact that people are more important than property and therefore water for people should come ahead of water for property.

MR. GOLDBERG: That is right, that is the concept that is referred to in our answer to Question 16.

SENATOR COBEY: Now, a portion of your municipal demand is for commercial and industrial water, and under the priority that you have incorporated in the contract then this commercial and industrial water, which is a business or property use of water, comes ahead of another property use, namely agriculture, and another business use, is that correct?

MR. GOLDBERG: Yes.

SENATOR COBEY: And are there court decisions or other authority interpreting Water Code Section 106 to support that, that a municipal use as a whole as distinguished from the



domestic component takes priority over an agricultural use?

MR. GOLDBERG: I don't know.

SENATOR COBEY: Were there any objections made by the agricultural groups after the contract was modified on October 21 to modify this formula for allocation of costs as between annual entitlement capacity?

MR. GOLDBERG: I believe Mr. Berry can answer that question.

SENATOR COBEY: All right.

MR. BERRY: Senator, there were no objections prior to execution of the Metropolitan contract. I believe since that time the objections to the method of cost allocation and the method of reduction in time of shortage have been raised.

SENATOR COBEY: But there were no objections between October 21 when this was first proposed and November 4 when the contract was executed?

MR. BERRY: Not to my knowledge.

SENATOR COBEY: Now, as I recall, at the Porter Committee hearing in Santa Monica in the middle of July last year, the proposed contract originating with Metropolitan Water District had a provision in there that the contract would not be effective until approved by the Legislature. Wasn't that in the initial Metropolitan Water District proposal?

MR. BERRY: I'm sorry, I would have to check that out. On the early draft of the contract, Senator, I don't remember exactly whether that was proposed.

SENATOR COBEY: Well, would you check that out because it is my recollection that it required both judicial ratification and legislative ratification in the Metropolitan Water District's original proposal.

MR. BERRY: As I recall, that is generally correct.

SENATOR COBEY: If they wanted that, why didn't the State agree to this principle of legislative ratification?

MR. BERRY: We thought that by providing in Article 2 of the contract for legislative review of the contract and possible legislation concerning the contract that we had fulfilled the purpose that would be served by a provision for legislative ratification.

SENATOR COBEY: As a lawyer, Mr. Berry, you are familiar with the concept of the burden of proof, aren't you?

MR. BERRY: Yes, I am.

SENATOR COBEY: You realize that the burden of proof legislatively was changed as between the proposal that Metropolitan Water District put up and the one that was incorporated into this contract? In other words, under their proposal the contract would not have been effective until approved by both Houses of the Legislature. Under your language that you have in the contract at the present time, the contract is effective 91 days after the close of this Session unless disapproved by both houses of the Legislature.

MR. BERRY: That is correct.

SENATOR COBEY: So what happened was what we

lawyers call a rather significant shift in the burden of proof legislatively. You agree?

MR. BERRY: I would agree.

MR. GOLDBERG: Pardon me, I would say the burden of persuasion rather than the burden of proof.

SENATOR COBEY: As a good lawyer you would agree those terms are generally identical. Now, it may be I misread on page 16/1 of the contract, Article 16, referring to subdivision (d). Am I wrong in my impression that this constitutes a limitation on the use of Davis-Grunsky funds?

MR. BERRY: I believe you are wrong, Senator. Article 16(d) does not concern the use of Davis-Grunsky funds as we have interpreted it here.

SENATOR COBEY: I thought Section 12938 included--

MR. TOWNER: It does not, Senator.

MR. BERRY: I was going to mention that in the definitions I believe we have excluded the Davis-Grunsky local projects from the contract.

SENATOR COBEY: That is taken care of in the definition section?

MR. BERRY: Yes.

SENATOR COBEY: All right, Mr. Goldberg, what is the appeal you refer to under Section 12937 of the Water Code in case the parties are in dispute?

MR. GOLDBERG: I'll read the language I had in mind. It is--well, I can't identify it by sentence, but I'll

read the whole sentence, Senator, "Such contracts shall not be impaired by subsequent acts of the Legislature during the time when any of the bonds authorized herein are outstanding", and the next clause which is what I actually had in mind, "And the State may sue and be sued with respect to said contracts."

SENATOR COBEY: I see. One final question. Now, as I understand the applicable provisions of this contract, you do permit the district to make outside sales?

MR. GOLDBERG: Certain outside sales are permitted. I think Mr. Berry has the article.

MR. TOWNER: Excuse me, while he's looking for that. Senator, I would like to correct my statement. You are right, Section 12938 does provide for Davis-Grunsky along with other facilities, but Mr. Berry's answer is the answer you really wanted. They are excluded completely from this contract.

SENATOR COBEY: Very good.

MR. BERRY: Article 15 of the contract provides that no outside sale may be made by the district which would materially impair its repayment capacity. Now, sales which the State determines would not have this effect could, of course, be made. We would require that in certain cases the district obtain the prior consent of the State to any type of sale irrespective of its effect on repayment capacity and also we require that the district notify us of any type of sale.

SENATOR COBEY: Well, if I understand you correctly, all outside sales then are subject to State approval before they



are made by the district?

MR. BERRY: No, not all outside sales. The language reads "Except insofar as such water is sold by the district to the United States, the State of California, or to purchasers for use within areas which are outside the areas proposed to be served by the State with water made available by the system, project water delivered to the district pursuant to this contract shall not be sold or otherwise disposed of by the district for use outside the district without the prior written consent of the State."

SENATOR COBEY: This is more liberal than the Bureau of Reclamation normally provides in their contracts, is it not?

MR. BERRY: As I remember the Bureau of Reclamation provisions, it is.

SENATOR COBEY: Generally speaking, they prohibit all outside sales, right?

MR. BERRY: That is my general understanding.

MR. GOLDBERG: I think it is all outside sales without the consent of the Department.

SENATOR COBEY: Without the consent of the Bureau?

MR. GOLDBERG: Yes.

CHAIRMAN TEALE: Senator Richards.

SENATOR RICHARDS: Referring, Mr. Goldberg, to some of the definitions which were touched upon by Senator Cobey and by other questioners, the definition, for example, of municipal use appearing in the contract itself, item 10 on page 1/7 of the contract, from where is that definition taken, or was that a

matter of re-negotiation?

MR. GOLDBERG: I will refer that question, if I may, to Mr. Berry.

MR. BERRY: Senator, that definition was modeled generally on definitions appearing in the rules and regulations of the State Water Rights Board. It is not an exact reproduction of the language in those rules and regulations, but the general idea I believe is the same.

SENATOR RICHARDS: Well, are you familiar with any litigation in which the rules and regulations have themselves been an object of court decision in this instance?

MR. BERRY: I'm not aware of any.

SENATOR RICHARDS: What I'm driving at is that Senator Cobey raised an interesting question concerning municipal use. I was somewhat surprised by Mr. Goldberg's answer. It is my understanding this has been litigated again and again and municipal use does invariably include industrial use without any exceptions in the decisions of the court.

MR. GOLDBERG: That may very well be true, Senator. When I say I don't know, I'm afraid I'm just exposing the depth of my ignorance.

SENATOR RICHARDS: Further on the matter of definitions, on page 1/1, item 1, subsection (c) it brings out a definition of the word "Delta". However, I noticed in the answers of the Department on page 5 to Question No. 3, we get into the question of a watershed of the Delta and here I'll reveal my own ignorance. I do not know whether the contract depends in any of its clauses

upon the definition of what are the geographical termini of the watershed of the Delta, whether this has ever been decided. My question therefore is, does the contract depend upon in any instance a definition being ascertained as to the termini of the watershed of the Delta, and if so, what are those termini?

MR. GOLDBERG: I don't know of any definition in the contract of watershed of the Delta. There is a statement in the Burns-Porter Act which I don't think is relevant in this connection. It is Section 12931 of the Burns-Porter Act which says that for the purposes of this chapter the Sacramento-San Joaquin Delta shall be deemed within the watershed of the Sacramento. We have not used that definition in the contract.

SENATOR RICHARDS: Well, it would be your general understanding, I gather, from the answer that a definition does not have to be reached in order to otherwise interpret the contract?

MR. GOLDBERG: That is true and we interpret the phrase "in, above and below the Delta" as those areas having as the engineers phrase it a natural hydrologic continuity.

SENATOR RICHARDS: And also in terms of whether or not we have to confine it to a practical matter, is this within the contract a limitation--perhaps I should put it this way. To what degree, if at all, is the construction of facilities connected with the California Water Plan or system north of the Tehachapies regulated by the terms of the contract signed between the Metropolitan Water District and the State? In other words, other than that which you have already explained to the effect that obviously the number

of contractors would in part determine the amount of water which will flow through the facilities, is there any reason for anyone north of the Tehachapies to worry about this contract as a practical matter affecting the construction of the facilities by the Department of Water Resources?

MR. GOLDBERG: Well, we have the problem of the cut-off date. We have to get started constructing something and if the areas don't come in by 1963, as I understand the contract they are liable to find that we have installed no capacity for them because we will have no repayment assurance. We will have no capacity for them, sir, because we will have no repayment assurance.

SENATOR RICHARDS: That, of course, is apparent. What I am trying to drive at, is it material in an argument over construction, the details of construction of facilities north of the Tehachapies--are the terms of the contract that we are now discussing material to that argument or could they be?

MR. GOLDBERG: I'll turn that question over to Mr. Towner if I may.

MR. TOWNER: Well, Senator, if I understand your question, how does this contract affect the construction and the operation of the project with respect to areas north of the Tehachapies, is that right?

SENATOR RICHARDS: In re construction if at all.

MR. TOWNER: Well, they do affect the area because in Article 45 we provide that the other contracts will be



substantially the same as this one, so, for example, with respect to the Delta water charge which is established in this contract, the same charge would be made to other contractors taking water north of the Tehachapies. There are other instances and Mr. Berry could probably give you a comprehensive rundown if you would like that.

CHAIRMAN TEALE: Is that Delta charge provided in the service charge of the Oroville Dam?

MR. GOLDBERG: Yes, Senator.

SENATOR RICHARDS: I have only one more, Mr. Chairman, and this, again for purposes purely of clarification, the parties to this contract are the Metropolitan Water District and the State of California. To the degree, Mr. Goldberg, that you speak as a representative of the Department of Water Resources and to the extent that the Department of Water Resources may operate as an agency binding the policies of the State of California, is the State, and you are now speaking for them, satisfied with this contract as is with no changes?

MR. GOLDBERG: Yes.

SENATOR RICHARDS: That is the State's position?

MR. GOLDBERG: Yes, we could go ahead and construct the facilities, initiate construction, without having any changes in this contract.

SENATOR RICHARDS: Is it then the State's position so far as you understand, and bearing in mind the contract signed would become effective within 91 days following the adjournment of this Session unless something happens in the middle of this Session --since that is the case, is the State then not policy-wise

requesting any changes or seeking any in the course of the Session as far as you know?

MR. GOLDBERG: No, we are not seeking any changes in the contract.

SENATOR RICHARDS: Thank you.

CHAIRMAN TEALE: Senator Shaw.

SENATOR SHAW: Mr. Goldberg, I would like to direct your attention to 8/1 having to do with the option to increase maximum annual entitlement. I'm not going to be questioning about the text, just that general subject. First, aren't there potential service areas which at this point in time have no contracting agency in existence, no enabling legislation has been even introduced?

MR. GOLDBERG: That is correct.

SENATOR SHAW: Such areas are going to be hard put, are they not, to get into the act so to speak by December 31, 1963?

MR. GOLDBERG: Yes, they are, Senator.

SENATOR SHAW: Have you made any study as to what areas there are south of the Tehachapies that were contemplated as possible service areas for which there is no existing agency?

MR. GOLDBERG: I'll have to ask Mr. Reynolds and Mr. Berry that.

MR. REYNOLDS: It is my feeling, sir, there are no areas south of the Tehachapies where organization is a problem, that all of the service areas south of the Tehachapies are organized in an agency form to enable us to deal with them.

SENATOR SHAW: Covering all the area you ever contemplated serving?

MR. REYNOLDS: Yes, that is my understanding. Now here you have the Northern California part of our organization. There is an agency as the aqueduct would go down over the mountains into Riverside County which has recently talked to us of buying water which is not organized at the present time, but that is not included within our earlier study and I would think that even that small area would have no organizational problem within the three years. I think they are rather small.

SENATOR SHAW: Well, I assume that is one and perhaps there is another in the greater Morocco area of San Bernardino County.

MR. REYNOLDS: There may be.

SENATOR SHAW: The necessary water studies to determine what would be proper contracts for them might require what sort of time?

MR. REYNOLDS: I would say if an area were really--

SENATOR SHAW: Starting first with the State participating, where the State helps.

MR. REYNOLDS: Where the State has to help form an agency?

SENATOR SHAW: No, not form the agency, make the basic survey.

MR. REYNOLDS: Well, I would say 12 months would be adequate to make an adequate survey of a relatively small area and

even a moderately large area.

SENATOR SHAW: For contract purposes?

MR. REYNOLDS: For contract purposes. If we have erred here in answering this, there may be large unorganized areas. I don't know, but we will run this down and answer that.

SENATOR SHAW: Well, maybe this is not here before us today, but assume for the moment that you are representing an area without enabling legislation, wouldn't you recommend that such enabling legislation be enacted this Session?

MR. GOLDBERG: Yes, and we have so recommended particularly to representatives of Kern County.

SENATOR SHAW: Will the State in its cooperative study arrangement, whatever you call it, so far as you know recognize the fact that these districts have got to have an answer in a hurry? Would you give some priority to their work so it can be finished before this deadline date?

MR. GOLDBERG: Yes, that is one of the subjects that Mr. Warne has discussed with me from time to time. This is a matter of great urgency with us, to get these areas organized.

SENATOR SHAW: Will you supply the legislators generally with material concerning the parts of their district that are not now covered by an agency that perhaps should have an agency at this Session?

MR. GOLDBERG: Yes, I think we can do so.

SENATOR SHAW: May I put that in the form of a request?

MR. GOLDBERG: I was going to say if that is in the



form of a request we will certainly attempt to honor it.

SENATOR SHAW: I so request.

CHAIRMAN TEALE: Senator Slattery.

SENATOR SLATTERY: Mr. Goldberg, Question 3 on page

5--

MR. GOLDBERG: Yes, sir.

SENATOR SLATTERY: In the second part of the question, "Is it contemplated that users of water developed by these additional facilities, who are located between the facilities and the Delta, would pay 'cost of service', or would they be charged the adjusted Delta water charge?"

Now, does this refer only to those facilities to conserve water or use water, water users or water conservation facilities, these additional facilities?

MR. GOLDBERG: These additional facilities refer only to conservation facilities. That is all that the Delta water charge is directed to, sir, the conservation facilities.

SENATOR SLATTERY: Now, would these be only facilities in the Delta watershed?

MR. GOLDBERG: No, these are facilities outside the Delta watershed.

SENATOR SLATTERY: Now, in the reply here, "The Burn-Porter Act does not fix a policy regarding charges to users located in watersheds having no hydrologic connection with the Delta and not dependent on the Delta Pool for a water supply," to what watershed--well, put it this way. Could you give me an example of the

watershed to which you are referring here or which is referred to here?

MR. GOLDBERG: Yes, the hypothetical instance that we considered in preparing the answer to this question was the watershed of the Eel.

SENATOR SLATTERY: Eel River?

MR. GOLDBERG: Yes.

SENATOR SLATTERY: Then, I would ask one more question and that is in the last paragraph on the page about this outside water brought in from an outside watershed, that is, the watershed of the Eel, what is the policy, or is there a policy yet as to the pricing on such water after it gets into the Delta?

MR. GOLDBERG: It would be picked up in the Delta water charge. As the additional facility is built in the Eel, the cost of building that facility, or that portion of the cost of building that facility that is attributable to bringing water into the Delta would be used to increase the Delta water rate.

SENATOR SLATTERY: Would not this Eel water probably be more expensive than Feather River water?

MR. GOLDBERG: Yes, it would, sir.

SENATOR SLATTERY: And once the waters are commingled, you would then set a rate which would apply equally to both waters?

MR. GOLDBERG: Yes. That is one of the inherent parts of the so-called utility concept that we have referred to, that the initial users do not get a priority as to price. That is how you keep the system expanding to meet future needs. There are two

branches to this utility concept. One, the initial user doesn't get an exclusive right; second, he has to pay the increasing rate as the rate increases, but a new user can come in regardless of the initial use, but the new user doesn't get any priority simply by virtue of his location. This is part of the implementation of the county of origin idea, sir. The new user simply because he happens to be close to the facility isn't going to get a preference as to price, but he gets a right to come in even though he may be far later in time.

SENATOR SLATTERY: Would that apply, sir, to users above the Delta?

MR. GOLDBERG: Yes, it would, though the Department has formulated no policy as to what the rates would be above the Delta, but certainly users in the watershed of the Eel would have a right to come in, although there may be special problems of rate fixing. We are aware of the existence of them, but we haven't come to any determination.

SENATOR SLATTERY: There would be no special consideration given to the fact that they were closer to the facility?

MR. GOLDBERG: No, sir, there would not. However, there would be a problem of allocating the costs attributable to them.

SENATOR SLATTERY: The cost would be allocated according to the distance, shall we say, and the expense of transporting the water the shorter distances, rather than bringing it into the Delta?

MR. GOLDBERG: Not the cost of transporting. The cost of transporting the water into the Delta would be merged into the Delta water rate, but you would have this sort of problem. You build a large dam on the Eel whose primary function is to conserve water to bring it into the Delta. Then, you build it, let's say, 5 feet higher to supply the relatively moderate users that exist downstream from the dam. How would you allocate the cost of that additional 5 feet? Now, it is possible that that would be allocated exclusively to the water users on the Eel. Maybe they would be required to pay the Delta water charge. This is something that hasn't been determined. Maybe that is the fair thing to do. That doesn't necessarily mean they would pay more than they would on an allocation basis. This is something you would have to determine on the basis of the future costs.

The one thing that is clear at this time is that this is the converse of Senator Richards' problem. He asked in what respect did the contract control other contractors. One thing that is clear is that this contract does not control other contractors outside the Delta watershed. Whatever happens with the people on the Eel we don't know, but they are not controlled by this contract.

SENATOR SLATTERY: They are not controlled by this contract?

MR. GOLDBERG: That is right. The user downstream from the dam on the Eel and the user upstream may be in a different position.

SENATOR SLATTERY: Thank you.



CHAIRMAN TEALE: Senator Murdy.

SENATOR MURDY: I think the subject has been pretty well covered and I'm anxious to hear the testimony of the Metropolitan Water District, so I'll waive my time to get along.

CHAIRMAN TEALE: Senator Dolwig, do you have another question?

SENATOR DOLWIG: I was asked to ask this question in behalf of Senator Christensen. As representing the Department of Water Resources, do you consider it desirable or undesirable for the Legislature to consider legislation to define the rights under the Water Protection Act and also the Area of Origin Act?

MR. GOLDBERG: I'll have to answer that question on a personal basis because I'm not aware that the Department has taken a position on it. I would state that in my opinion it is a mistake to think in terms of rights of areas of origin and think in terms of construction of projects and a fair share of the cost of those projects because as I said earlier this morning, these problems cannot be resolved in terms of water rights. As long as you think in terms of water rights, you are thinking in terms of scarcity. Our problem is to create an abundance of water and provide a fair means for sharing the costs of it.

SENATOR DOLWIG: I have just some informational questions. Mr. Goldberg, assuming that the contract would go into effect 91 days after the legislative session, in order to carry out the terms of that contract, does the Department contemplate building the Oroville Dam?

MR. GOLDBERG: Yes, sir.

SENATOR DOLWIG: And will the Oroville Dam be built to its full capacity?

MR. GOLDBERG: Yes, sir.

SENATOR DOLWIG: And is there provision made for flood control moneys from the Federal Government?

MR. GOLDBERG: An appropriation is authorized--I can't recall the amount, whether it is 70 million, 73 million or 75 million dollars. No appropriation has been made and what the actual allocation would be has not been made.

SENATOR DOLWIG: But the appropriation has not been made?

MR. GOLDBERG: No, sir. It is an authorization to appropriate.

SENATOR DOLWIG: With the building of Oroville Dam, how much water will be available in the Delta under this contract?

MR. GOLDBERG: I'll ask Mr. Reynolds to answer that, sir.

MR. REYNOLDS: I would like to expand my answer to maybe help answer some of the things that were asked this morning. If San Luis Reservoir and Oroville were built and operating at the present time, there would be a great deal of water available in the Delta, 7 or 8 million acre feet. We have designed our project so that by the time we meet a full demand of 4 million acre feet, and this is the answer that you have just asked for, 4 million acre feet, that demand will not be made upon the project until 1990, and

by that time because of the demand and development in the counties of origin, there will only be that much water available from it.

But in answer to your question, the yield is 4 million acre feet, which demand will not be made until 1990.

SENATOR DOLWIG: During a similar dry period to 1924 to 1932, how much water would be available?

MR. REYNOLDS: If the year 1924 or the hydrology of that year occurred in 1990, there would be 3 million 300 thousand acre feet of water from the project.

SENATOR DOLWIG: There wouldn't be adequate water to fulfill the terms of the contract?

MR. GOLDBERG: It would require us to enforce the agricultural deficiency.

SENATOR DOLWIG: Assuming that the contract will go into effect, when will we be selling the first bonds under your Proposition No. 1?

MR. GOLDBERG: I'll ask Mr. Berry to answer that. There is a limitation date in the contract and I can't recall just what it is.

MR. BERRY: That date is specified in Article 2 of the contract to be 180 days after the effective date of any legislation which would affect the contract. That is not, of course, an absolute limitation on the sale of bonds. It would only become one if there was such legislation.

SENATOR DOLWIG: What is the amount of bonds that would be contemplated to be sold at that time?

MR. GOLDBERG: I don't know that any bonds would be sold at that time, Senator. That is the time it could start selling, but I don't know when the first bond is contemplated. Do you know, Mr. Reynolds?

MR. REYNOLDS: Yes. Sir, in accordance with the present schedule we have, it looks to us that we will have to sell the first Burns-Porter bond in early 1963.

SENATOR DOLWIG: At the time you sell those bonds, which part of the initial project conservation facilities will you build?

MR. REYNOLDS: There will be none built at that time. I don't know exactly for what feature that bond sale will be made.

SENATOR DOLWIG: Let me ask you this, will it be for conservation or transportation facilities?

MR. REYNOLDS: By the spring of 1963 the main aqueduct from the Delta itself will be under way so possibly some of the money would go there. Oroville will be substantially under way so it probably will go for all these works that are being built at that time.

SENATOR DOLWIG: Well, do you know at this time, have you got any plans--I imagine you will be starting a number of facilities at the same time. Do you know what those facilities will be?

MR. REYNOLDS: We have laid out ahead of us, sir, a definite schedule which I would be glad to furnish you.

MR. DOLWIG: I would like that for the record if you know.



MR. REYNOLDS: No, I don't. I hesitate to answer that.

SENATOR DOLWIG: Insofar as your plans are now, are you going to build Oroville first or are you going to build transportation facilities first?

MR. GOLDBERG: They will be built simultaneously.

SENATOR DOLWIG: And are you in disagreement with your own consultant's report that there will be inadequate money to provide for all of these facilities?

MR. GOLDBERG: We don't think the problem of inadequate money will be resolved by delaying construction. There is less risk of having inadequate money by starting construction of Oroville now than there is by delaying it if the Main people are right in their prognostications as to inflation.

SENATOR DOLWIG: Mr. Goldberg, the question I would like to know is, are you following your consultant's recommendation, namely Dillon-Read or the Charles P. Main Corporation, or aren't you insofar as your initial project conservation facilities are concerned?

MR. GOLDBERG: We certainly aren't following the Main report which was to delay the construction of Oroville. I forget the date, but it was by about 10 years.

SENATOR DOLWIG: Are you following the Main report in every other aspect?

MR. GOLDBERG: I can't answer that question.

SENATOR DOLWIG: Thank you very much.

CHAIRMAN TEALE: I would like to ask one further

question. It is my understanding that the Governor is going to ask for legislation which would allow for pricing differential based on the use of excess lands. My understanding of the contract is that they must recover sufficient moneys to pay the total repayment of the moneys expended. Would adoption of a pricing differential for excess lands affect the contract?

MR. GOLDBERG: No. The adoption of a pricing differential on excess lands would not necessarily affect the contract. As I recall that differential clause, that is a separable portion of the contract. Am I wrong on that, Mr. Berry?

MR. BERRY: To the extent that there was any variance between the legislative provision for price differential and the provision already in the contract, the contract would, of course, either be changed in accordance with the legislation or if that was impossible, then as Mr. Goldberg says, the provision is separable and could be left out of the contract.

CHAIRMAN TEALE: Let me phrase it another way. If the contract were presently in effect, would the Legislature be able to pass valid legislation that would allow a pricing differential?

MR. BERRY: Yes.

MR. GOLDBERG: May I put a question to Mr. Berry. Could the Legislature pass legislation that would allow a different pricing differential than the one now in the contract?

MR. BERRY: I believe in that event--well, first of all, the provisions of Article 2 would be applicable to that legislation, and if the State and Metropolitan Water District agreed on

contract amendments incorporating the new or different price differential provision provided by the Legislature, then the contract would be amended and it would go into effect with the price differential so changed. However, if--well, I think I'll just stop there.

MR. GOLDBERG: I take it that your answer is this, the answer is no, if the contract went into effect, you could not have a different price differential than that now provided for.

SENATOR COBEY: In the contract?

MR. BERRY: That is right.

CHAIRMAN TEALE: I would like to ask one further question. Mr. Goldberg, if there were a surcharge or price differential set up by law in a lesser amount; in other words, a lower charge, and this differential were less than the amount required to pay back the individual's fair share of the cost of the water, do you think it would be constitutional under the Burns-Porter Act?

MR. GOLDBERG: I have no doubt of the Legislature's authority to in effect grant a subsidy and then to control it. I don't think if this contract went--I can't answer the question without studying the contract in this particular connection, but as far as the general power of the Legislature to have a subsidy control, whether it be by acreage limitation or some other form of subsidy control, in my opinion there is no question of the Legislature's power. It does have such power.

CHAIRMAN TEALE: The constitutional provisions of the Burns-Porter Act requiring full repayment would not enter into that as long as the total of the subsidy and the lesser charges came out

even?

MR. GOLDBERG: Yes.

CHAIRMAN TEALE: Thank you very much. I know there are other questions in the minds of the Committee, but I also realize you are here in Sacramento and we can get you back, so at this time I'll thank you for your testimony and we will call on Metropolitan Water District.

MR. GOLDBERG: Thank you for your time and patience.

CHAIRMAN TEALE: I have before me a letter from Mr. Joseph Jensen, chairman of the board of Metropolitan Water District in which he authorizes the district to be represented by Mr. Robert A. Skinner, assistant chief engineer, and Mr. William H. Fairbanks, Jr., legislative representative, who has been before us as a member of the Water Department, I think. Mr. Skinner, will you please proceed?

MR. SKINNER: Thank you, Mr. Chairman. Mr. Chairman and Members of the Committee, I have one gentleman here who hasn't been introduced, Mr. D. C. Brooks, an engineer with Metropolitan Water District who helped in the work of analyzing the contract.

Our presentation consists of a general statement of the contract terms and conditions and fundamental concepts and principles, a short synopsis of the contract, a very brief presentation and a more comprehensive synopsis which includes a rather complete summary of the contract. We are mindful of the fact that the State as the architect of this contract is the purveyor of water. The Metropolitan Water District is in the guise of a customer and in effect this is a contract between the sovereign State of California



and the quasi municipal corporation of the State. In view of these facts we have not made a categorical answer to the questions propounded by the Committee, believing that a parallel presentation at this time probably would use the time of the Committee without the most productive result. Now, I could summarize the statement briefly that we have made and then we will be at your service for whatever questions you might wish to pose.

The contract, in essence, as was brought out before, provides that the State shall construct, operate, and maintain water supply facilities for service to the District, with delivery of water estimated to begin in 1972, and shall continue to deliver water to the District during the entire project repayment period, but in no event for less than 75 years, in quantities limited by specified annual entitlements and maximum monthly quantities, and subject to a maximum annual entitlement of 1,500,000 acre-feet per year. It further provides that the District shall pay its allocated share of the reimbursable project costs, including capital costs, minimum operation, maintenance, and replacement costs which must be paid irrespective of the quantity of water delivered, and operation, maintenance, and replacement costs which vary with the quantity of water delivered. The document by its terms constitutes a pattern for contracts proposed to be entered into by the State with other water agencies pursuant to the Burns-Porter Act, under which funds are to be provided to assist in the construction of a State Water Resources Development System and in particular for financing the State Water Facilities specifically described in the Act, comprising the Feather River and Delta Diversion Projects or initial unit of the California Water Plan.

In the negotiation of the contract every effort was made to give full and impartial consideration to the rights and reasonable expectations of all prospective contracting agencies. A primary objective, in accordance with the Burns-Porter Act and the provisions of the Central Valley Project Act incorporated therein, as well as the "Contracting Principles" issued under date of January 20, 1960, with the approval of the Governor, was to insure that all reimbursable capital, operation, maintenance, and replacement costs of the project facilities will be returned to the State by the contractors within the project repayment period. Allocated capital costs are to be paid with interest at the project interest rate, and any deferred interest is to be accumulated at such interest rate and added to the allocated capital costs, so that complete financial equivalence will prevail among the contractors, irrespective of variations which may be made in payment schedules to assist contractors with initially limited payment capability.

Contracts executed by the State for a dependable supply of project water are required to be substantially uniform with respect to basic terms and conditions, with certain specified exceptions respecting schedules for payment of the capital costs of project transportation facilities, as mentioned subsequently.

As previously mentioned, provision is made for continued service, after expiration of the term of the contract, under conditions affording contractors the same maximum annual entitlement as before, service at no greater cost than under the contract terms and conditions, preservation of physical conditions of service,

retention of water quality objectives, retention of optional rights to use of project transportation facilities, and assurance that other terms and conditions of the continued service will be reasonable and equitable. Such provision for continued service is included in the Contracting Principles referred to above and is inseparable from the utility concept under which the State will operate the facilities.

It is of urgent necessity to begin construction of the San Joaquin Valley-Southern California Aqueduct as soon as possible. The contract provides that the State shall make all reasonable efforts to commence construction of the project transportation facilities by June 30, 1963. If construction of the aqueduct south of the San Luis Canal of the San Luis project has not been commenced by December 31, 1964, the District may terminate the contract. This permits four years to elapse before construction south of San Luis must commence, and it appears reasonable that this should be the maximum length of time that any ordinary contingency should be permitted to delay the aqueduct construction.

The Delta pooling concept, as set forth in the Contracting Principles, is an integral part of the contract provisions. Under this concept the State will maintain a sufficient regulated quantity of water in the Delta pool to supply the contract requirements for water export, and will provide additional facilities for augmenting the supplies of water at the Delta periodically as required. The costs of works required to conserve and supply water at the Delta, defined as project conservation facilities in the pattern



contract, will be merged and apportioned to all contractors by applying a uniform rate per acre-foot to annual entitlements of all contractors to project water, irrespective of geographical location of service areas. The rate per acre-foot for the Delta Water Charge necessarily will rise in future years as additional facilities for augmenting the supply of water are constructed from time to time.

The specified maximum annual entitlement of 1,500,000 acre-feet per year for the District's use is closely related to the expected 1990 demand for project water in the District's present service area, affording only a small allowance for territorial growth. The corporate area of the District on November 4, 1960, the date of execution of the contract, was 3,540 square miles, and since that time has increased to nearly 4,000 square miles through additional annexations, chiefly in Ventura and Los Angeles Counties. Present population of the District is approximately 7,500,000 and assessed valuation nearly \$14 billion. There are now 91 incorporated cities within the District. In this connection we are mindful of the expected growth in Ventura County and the phenomenal growth in Orange County and parts of San Diego County. It appears probable that before year 1990 the demand for project water in the District's service area will have outgrown the contract maximum annual entitlement of 1,500,000 acre-feet. I mention those merely to show that the District is not reaching out at least for a quantity of water greatly in excess of what might be considered as 1990 requirements.

The contract enables the District and all other contractors to elect to increase proportionally, and to the extent then available, their maximum annual entitlements for project water in the



event it should happen that the entire minimum project yield, estimated to be 4,000,000 acre-feet per year, has not been committed under executed contracts by December 31, 1963, provided that the water involved in any such increase can be put to beneficial use within a reasonable period of time. The question has been raised whether the specified date of December 31, 1963, affords fair consideration of the interests of undeveloped or slowly developing areas. The urgent need for additional water in Southern California requires that the construction of the State Water Facilities be commenced without unreasonable delay, that is, if this project is to go forward at all, so that the work may be completed in as short a time as practicable. It is recognized that the San Joaquin Valley and other areas of the State not included within the Metropolitan Water District also have urgent needs for additional water, and it is believed that if the citizens in these areas are determined in their efforts to negotiate a contract with the State, this could be accomplished within the next two years. The date of December 31, 1963, provides two general sessions of the Legislature for any interested areas or agencies to secure appropriate enabling legislation, if such be needed, and also affords adequate time in which to negotiate a contract, the pattern for which has been established by the two contracts which have been executed.

The costs attributable to the project conservation facilities are to be paid to the State by the contractors under a charge designated the Delta Water Charge. This charge is so determined that, together with revenue derived from the sale or other disposal of

electrical energy generated through operation of the project conservation facilities, the charge will be sufficient to return to the State all reimbursable capital, operation, maintenance, power, and replacement costs of the project allocated to water conservation. The charge is apportioned to the contractors according to their respective annual entitlements (or annual use in the case of the variable operation, maintenance, power, and replacement component) multiplied by a computed rate per acre-foot adjusted annually as experience accumulates, so that full recovery of costs will be obtained by the State by the end of the project repayment period. The rate for the Delta Water Charge is specified to be \$3.50 per acre-foot through December 31, 1969. It will increase when additional facilities are required to augment the water supplies at the Delta, presumably by 1982, but will be uniform to all contractors for project water in any particular year.

The costs attributable to the project transportation facilities are to be paid to the State by the contractors under a charge designated Transportation Charge. This charge is determined on the basis of returning to the State all reimbursable capital, operation, maintenance, power, and replacement costs of such facilities, and is apportioned to the contractors according to their proportional use of the facilities. For determination of proportional use ratios, the aqueduct system is segregated into reaches.

Now, this proportional use of transportation facilities, as was mentioned in the previous testimony, was a matter of extended discussion over quite a period of time. The first approach was the

volume delivery, that is the apportionment according to maximum annual entitlement. The District took the position that the proportional use in fact depends upon full capacity provided in the aqueduct facilities for service to a contractor. Now, there are certain elements in this question which were not emphasized before that may be of interest. The maximum monthly delivery obligation of the State from the aqueduct downstream from pumping plant 6, that is the high list plant at the north side of the Tehachapi Mountains, is limited to 11 percent of annual entitlement irrespective of what proportion of the water may be put to agricultural use.

This corresponds to a permitted peak flow of 132 percent of annual mean, the maximum considered permissible in view of the high lift at Pumping Plant VI. On the other hand, maximum monthly delivery from the aqueduct upstream from Pumping Plant VI is made available up to 18 percent of that portion of annual entitlement put to agricultural use, corresponding to a peak flow of 216 percent of annual mean. Under the maximum annual entitlement basis for cost allocation the disparity in peaking capacity in the ratio of 18 to 11 afforded to contractors serving agricultural users upstream from Pumping Plant VI would be inequitable, because the additional peaking capacity would be provided without having any effect on apportionment of costs. Under the terms of the contract the costs are allocated on the basis of the average of the ratios computed on the basis of maximum annual entitlement and on the basis of flow capacity. The District's share of allocated capital costs of the project transportation facilities is estimated to be



\$30 million more on the annual volume basis than on the flow capacity basis, while under the adopted compromise the District's share of such costs will be \$15 million more than on the flow capacity basis. In addition, under the median cost allocation method specified in the contract, the District will pay about \$20 million more in minimum operation, maintenance, power, and replacement costs during the project repayment period than it would pay if costs were allocated on the flow capacity basis.

The contract includes provisions under which there may be variability in the schedules accorded different contractors for payment of capital costs of project transportation facilities. The District is required to make payment of its allocated share of capital costs for each year's expenditure for project transportation facilities in not more than 50 equal annual installments of combined principal and interest, beginning the year following the expenditure. Other contractors may be accorded greater deferment and a graduated scale of installments in payment of such allocated capital costs, according to circumstances applicable to the respective contractors, under provisions affording the State a wide exercise of discretion in these particulars. However, the contract requires that all contractors shall completely pay their total allocated capital costs, together with interest thereon, within the project repayment period.

The next paragraph discusses the reduction and deliveries of project water for agricultural use during times of drouth and I believe that that particular concept was so fully discussed this morning that it would be unprofitable to pursue it further.



The possible reductions in the annual entitlements and the maximum annual entitlements of all contractors in the event of a reduction in the minimum project yield threatening a permanent shortage of project water, shall be made proportionately, except to the extent such entitlements may reflect established rights under the area of origin statutes. If a particular area of origin can be defined and if water users therein establish rights under the applicable area of origin statute, then to the extent that annual entitlements and maximum annual entitlements of contractors reflect such established rights, those entitlements will not be proportionately reduced.

Now, that ends the general statement and as I mentioned there is included in the presentation these synopses of the contracts, so with that, Mr. Chairman, we are at your service.

CHAIRMAN TEALE: Thank you very much, Mr. Skinner. I'm going to call on Senator Murdy first because he has to catch an airplane and then we will have Senator Shaw and anyone else who wants to get in line. I would like to ask again in view of the time element we try to restrict lengthy questioning so we get around to all members. Senator Murdy.

SENATOR MURDY: Mr. Skinner, the contract calls for water to be delivered in Southern California by 1972, and doesn't it also provide that the commencement of the project shall not be later than June, 1963. That is only a little over a 9-year period. Do you think it is possible to construct a project in that length of time?

MR. SKINNER: Senator, we have explored that question and our observation of the designing, preparation of plans and specifications under the tempo of construction work, would lead us to believe that it is possible without actually engaging in a crash program, but I couldn't say that there was an absolute certainty that that would be the case.

SENATOR MURDY: You think it is reasonable, however?

MR. SKINNER: We think it is feasible, yes.

SENATOR MURDY: Then, this morning they were talking about--rather this afternoon, they were talking about the Department clinging to the idea of abundant water and that the State should furnish other projects in case water had to be pro rated. Is Metropolitan Water District satisfied with that concept?

MR. SKINNER: We feel that it is the only concept that would offer any solution of the water problems. In other words, the division of rates according to pursuit of legal principles would not result in increasing the quantity of water available to anybody. The Metropolitan Water District has entered into this contract in the acceptance of the premise developed in the State studies that there will be water sufficient to satisfy the needs of the service areas within the facilities to be constructed under this program.

SENATOR MURDY: Until the year 1990?

MR. SKINNER: Well, until the year 1990 under the specific State facilities, but not limited to the year 1990 in view of the supplemental facilities and possible further programs under the California Water Plan.

SENATOR MURDY: I would like to ask the same question of you that Senator Richards asked of the Department. Is Metropolitan Water District satisfied with the contract in its present form without amendment?

MR. SKINNER: Yes, the Metropolitan Water District is satisfied with this contract as executed. The board authorized this execution and is satisfied.

SENATOR MURDY: There is some difference of opinion between the Metropolitan Water District and the Bureau of Water and Power of Los Angeles, I believe. Has any effort been made to straighten that out?

MR. SKINNER: Senator, I believe the difference is not related to the terms and conditions of this contract. The controversy is internal within the Metropolitan Water District and has to do with the financing methods within the confines of the Metropolitan Water District itself.

SENATOR MURDY: In other words, pricing policy within Metropolitan Water District, but not concerned with the State pricing policy under this contract. I think that is all.

CHAIRMAN TEALE: Senator Shaw.

SENATOR SHAW: I assume, Mr. Skinner, that you didn't have an opportunity to go over the State's answers to the various questions that had been propounded in this rather sizable book that we have?

MR. SKINNER: Well, Senator Shaw, we have the questions as answered before us during the testimony this morning and we listened intently. I believe that it can be said that we have heard

these questions and answers and at least on my part I believe we understand them.

SENATOR SHAW: Well, as far as your whole delegation is concerned, do you concur in the answers that were given? If not, in what particulars do you not concur?

MR. SKINNER: I found nothing in the answers that were given by the Department to which we could disagree.

SENATOR SHAW: Does that go to the various questions?

MR. SKINNER: In regard to the Code?

SENATOR SHAW: No, the remarks that went on after the questions and answers.

MR. SKINNER: Well, insofar as interpretation of the contract is concerned, I believe it is true there were certain questions in respect to the Water Code which I wouldn't undertake to answer in regard to your question.

SENATOR SHAW: Well, I take it you are substantially in agreement with the presentation made by the State?

MR. SKINNER: Yes, we are.

SENATOR SHAW: Now, as I understood your comments with respect to this option to increase maximum annual entitlements, as a party to the contract, you felt that adequate time was allowed there, and as I remember you stated that this allows two legislative sessions in which enabling statutes could be enacted for areas which presently have no districts, is that correct?

MR. SKINNER: That is correct, Senator. That is what I stated.



SENATOR SHAW: Well, I would like to know if you feel very strongly about that particular limitation? Would the Metropolitan Water District have--what sort of objection would they have, if any, to extending it one more year? Before you answer that I would like to propound to you what might be a likely timetable if you were trying to enact a statute in the 1962 budget session. The first problem you would have is that it might be that the administration and the Governor in particular would not want to open up the subject of water legislation at that budget session in which event, of course, you could not create any enabling legislation. But beyond that consideration, unless you let us get into the session of 1963, we have to have our last chance in 1962. The session would end about April 15, the new Act would become law about July 15, and at least in the case of the last Act I saw, you would have to have some time to activate it. You have elections to see if the people want it, so I think it would be a reasonably early date to take July 15, 1962, when you first activate a district and then you have the problem of financing and getting the State on the job to make the water survey to see how much they want to contract for. And we have heard an estimate here of 12 months, but I suggest that the experience has been that it takes longer to make a suitable survey even for purposes of arriving at what you need to know to enter into a contract. But even with a year, that would take you to September of 1963 to even finish your study work and it would seem to me that would leave very little time between then and December of 1963, roughly three months, in

which to conclude negotiations of a contract.

So my first question is, would you agree that this presents a rather tight schedule for any area that has always been considered a potential user, but presently has no district to contract?

MR. SKINNER: Well, in attempting to answer your question, Senator, I would call attention first to the fact that again the State is the purveyor of this water. If the difficulties under the schedule turned out to be slower than we had anticipated or had been anticipated and it was unavoidable, I imagine that the State would come to our board and present the issue. I can't speak for the attitude of our board on this particular question because as of this moment all I can say is that our board has stood on the contract. But certainly I don't want to indicate here that Metropolitan Water District is going to be inflexibly arbitrary on the thing. As I say, we do realize that the State has the primary responsibility of getting this program under way and is the purveyor of the water. We are a customer.

SENATOR SHAW: Might I make this request, that the board not make an extensive study, but some study of the political mechanics involved in actually getting a district created.

MR. SKINNER: We shall be very glad to do that, Senator.

SENATOR SHAW: And give us a decision as to whether this might be extended one more year in say the next 30 to 40 days because we would then be in a better position to know whether we should try to alter this contract at this time, or if we are safe

to wait and have the matter resolved by mutual agreement between Metropolitan Water District and the other contractors, and these new prospective agencies. That was more of a statement. Do you understand my question?

MR. SKINNER: Your question goes specifically to--

SENATOR SHAW: To extending the time limit one more year so that we could, if necessary, get into the 1963 session.

CHAIRMAN TEALE: Is that all you have, Senator Shaw?

SENATOR SHAW: I think there should be another part to that. Second, if legislation is not enacted at this session changing Article 8, leaving the date as it is, will the board be agreeable to the extension of that date by mutual agreement with the State in case there are districts in a formative stage, but who have not concluded their contract? Would you be agreeable to extending the time one more year?

MR. SKINNER: I would remark, Senator, that this contract by its terms provides for amendments which are agreeable to the parties so that there again if the State came to the district with such a request, I'm sure it would be duly considered, but again I have to defer to the present record which shows that our board has approved this contract as it now stands, so I can't make an advance commitment.

SENATOR SHAW: No, I'm not asking you to. I'm asking you to propound this question to the board. I further understand they can't bind a future board, but we would still be interested at this juncture in knowing how they feel about agreeing to a modification in the contract if agencies are in the mill but not

completed when that date of 1963 comes around.

MR. SKINNER: Well, what you say is true, that action is within the purview of the board now and could be altered by a future board, that is true.

SENATOR SHAW: That is all.

CHAIRMAN TEALE: Senator Cobey.

SENATOR COBEY: Mr. Skinner, do you know whether the minimum annual yield of the Delta that is referred to in this contract includes any return flow from the San Joaquin Valley into this aqueduct?

MR. SKINNER: My understanding is that it does not, but I would like Mr. Fairbank to comment on that because I believe he knows more about that particular subject.

MR. FAIRBANK: My understanding, Senator, is the same. There is no return flow.

SENATOR COBEY: How long is the repayment period under this contract?

MR. SKINNER: The repayment period is until liquidation of the last bonds sold and that would be at least 75 years. It might be one or two years more than that.

SENATOR COBEY: As I understand it, under the terms of this contract this would be the repayment period for all other State contracts? There would be no alteration in the period itself?

MR. SKINNER: The project repayment period is the period, yes, sir. It would not be different for one contractor



for project facilities than another contractor.

SENATOR COBEY: The only variation that would be permitted if we allow this contract to remain unchanged, the only variation that would be permitted would be in the amounts of payments and the particular schedule of payments of a particular contractor, but all contractors would have to repay in full all reimbursable costs by the end of the project repayment period?

MR. SKINNER: As to project facilities, yes, sir, that is the case.

SENATOR COBEY: What proportion of the full cost of these projects are the reimbursable costs?

MR. SKINNER: The answer to that has not yet been determined because other than as to certain non-reimbursable costs of specific features which may be fairly well established such as the amount of somewhere between 70 million and 73 million dollars for flood control for Oroville, the determination has not yet been made, as I understand it, as to how much of certain other features might be non-reimbursable. For instance, the allocations to recreation might be non-reimbursable, but the amounts of such non-reimbursable costs, I believe, have not yet been established.

SENATOR COBEY: Or fish and game enhancement either?

MR. SKINNER: That would come under the same category as I understand it.

SENATOR COBEY: Now, to your knowledge what are the total reimbursable costs that the Metropolitan Water District will repay under this contract?

MR. SKINNER: Well, as to the project transportation facilities, the reimbursable capital costs would be, I believe, about 785 million dollars. You must realize that these are only estimates of 1959 price index, so they would not necessarily represent what experience will show finally to be the amount of reimbursable costs allocated to Metropolitan Water District.

SENATOR COBEY: Now, you have given us the transportation costs. What about the conservation costs, the capital costs?

MR. SKINNER: The Delta charge does not represent an allocation of capital costs to different contractors. The Delta charge comes within the utility concept as it was previously explained and the Delta charge is based on a rate which when applied to all the water estimated to be sold to contractors throughout the project repayment period will liquidate all the costs, that is, all the reimbursable costs of project conservation facilities which include not only the capital costs but the minimum operation and maintenance and replacement and power costs and so on and the variable operation and maintenance costs, remembering also that these costs together with the power revenues derived from electric energy produced by the project conservation facilities will accomplish this liquidation.

SENATOR COBEY: Now, Mr. Skinner, under this contract you agree to repay certain specific costs in full and I assume that you as the principal representative of the Metropolitan Water District had a pretty good idea at the time that you negotiated this contract of what sort of bill you think you were contracting to pay

in the future. What I'm trying to get is what was the total bill as you saw it at that time?

MR. SKINNER: Well, in order to answer your question, Senator, I think that I would have to refer to the component of costs. If it is a matter of capital cost based on the 1959 estimate, that might be a matter of something over 1 billion dollars, but the number of dollars that Metropolitan Water District would pay over the project repayment period, and bearing in mind that includes interest, operation and power costs, it might run even on the 1959 estimates to something like 3-and-a-half billion dollars.

SENATOR COBEY: Now, Mr. Skinner, my concern with these options is a little different than Senator Shaw. He seems to regard it and you do as primarily a matter of organizational difficulties. I regard it as a matter involving money, and I think you are probably aware of my personal opinion, that the bulk of Northern California agriculture within the service area of these initial facilities will be unable to pay this full repayment cost,

Now, as I see it, if my opinion should prove to be correct, then most of this water, this minimum project yield, this 2-and-a-half million acre feet above your contracted entitlement under this contract, will be available to you under these options about December 31, 1963, is that right?

MR. SKINNER: That is the date in the contract, Senator.

SENATOR COBEY: Well, if it should so happen that I should be right this time as a prophet and the agricultural interests north of the Tehachapies found that they economically couldn't

comply with this full repayment requirement by that time, then that water would be available to you and to, shall we say, any others who have made contracts up to that time south of the Tehachapies?

MR. SKINNER: Well, first of all, the matter of these options is something that has not been given extensive study by Metropolitan Water District as to probability of actually exercising the provisions of the contract. I believe that the terms of the contract in that respect were directed toward the financial feasibility of the project so that there would be some means to secure contract obligations covering as nearly as possible the 4 million acre feet. And bearing in mind as has been mentioned this morning that if prospective contracting agencies do not happen to participate in this particular project, they are not in any way barred from subsequent projects under the California Water Plan. This project is by no means one for ultimate demands in these areas. It is only for demands until 1990.

SENATOR COBEY: The only thing that is actually financed by the Bond Act that the people approved last November are these facilities up to 1990, isn't that correct?

MR. SKINNER: Except for the facilities designated "additional facilities", to which the offset bond funds might be applied. Those facilities might be applied to the Delta which would go a little beyond 1990.

SENATOR COBEY: Do you recall what the San Bernardino contract entitlement is?

MR. SKINNER: 90 thousand acre feet annual entitlement, I believe.



SENATOR COBEY: And at the present time there are just these two contracts in existence, yours for 1 million 500 thousand and theirs for 90 thousand?

MR. SKINNER: That is my understanding. I'll ask Mr. Fairbank..

MR. FAIRBANK: That is right.

SENATOR COBEY: And if my supposition should prove correct, and if the interests north of the Tehachapies were unable to financially meet the cost requirements by December 31, 1963, then under this contract your two districts would have under the contracts, Metropolitan Water District and San Bernardino District, would then have the option of picking up all the remaining water to be developed by these initial facilities under this Bond Act up to 1990?

MR. SKINNER: But that would be no indication that such would actually be the case, that there would be any actual attempt on the part of the two agencies to pick all the rest of the 4 million acre feet. I that if such, if there were such an eventuality, that it would be more probable at least that the initial project would have to be scaled down.

SENATOR COBEY: Well, I'm just asking you what your contract now calls for. If what I suppose occurs, why then you will be in a position that I outlined to you where you can pick up all the rest of the water?

MR. SKINNER: Well, contractually, but not necessarily financially.

SENATOR SHAW: May I interrupt? There are other agencies down there that might be contracting in the meantime, not just those two.

SENATOR COBEY: Well, I'll agree the whole wolf pack may not be limited to a single wolf. Now, I notice that on these options you provide that they could be exercised if you could demonstrate that you could put the additional water to a beneficial use within a reasonable time, is that correct?

MR. SKINNER: You said that "we" provide.

SENATOR COBEY: Well, the contract provides.

MR. SKINNER: Yes, sir, the contract does so provide.

SENATOR COBEY: So in this case when it comes to the right to exercise your option, you find a reasonable time rather than a specific deadline, is that correct?

MR. SKINNER: Well, I believe that the nature of this contract would endow the State with considerable authority to say what would be reasonable under these circumstances.

SENATOR COBEY: What I'm getting at, in deciding whether or not you have the right to exercise these options for X amount of water, that right is determined by whether or not you can put this water to a beneficial use within a reasonable time. When it comes to this matter as to whether anybody gets in on this minimum yield of 4 million acre feet, you come up against a flat deadline and not against a reasonable time.

MR. SKINNER: Well, of course, inasmuch as these facilities under the Burns-Porter Act are devised to accommodate demands approximately as of 1990, presumably it wouldn't be

considered reasonable to go way out beyond that in exercising such an option. Maybe Mr. Fairbank would have some comment on that because he is familiar with the underlying thought of the Department in that regard, I believe.

SENATOR COBEY: He is in a unique position in these negotiations. He was on one side and he is now representing the other party at this point.

MR. FAIRBANK: Well, I did not actually participate in the direct contract negotiations and I don't think that there is any controversy at all between the Department and the district in this particular aspect of the contract.

SENATOR COBEY: That is what disturbs me. Go ahead, Mr. Fairbank.

MR. FAIRBANK: Senator, I just might add that the manner in which you phrased your question, I would re-phrase it. I would say that the primary reason for a deadline, as I have indicated before to you, was to move forward with a project to meet water needs by specific times. This is at variance with, I believe, what I understand you to say on a reasonable period of time beyond 1990 to put additional quantities of water to use. They are not identical to me.

SENATOR COBEY: Well, as I see it, Mr. Fairbank, Mr. Skinner was indicating that he certainly thought a reasonable time should be limited to 1990.

MR. SKINNER: No, I said not way out beyond 1990. I don't suppose it would be an absolute cut-off at 1990 necessarily.

SENATOR COBEY: It might be 1995, and what we are talking about here by comparison is a cut-off of December 31, 1963, and that is what concerns me, is the difference in these cut-off periods. Now, as I understand your answer, Mr. Fairbank, what you are concerned about is that Southern California has to have this water by 1972, and I share in your feeling of the urgency of getting that water by then. What concerns me is that the State was concerned about satisfying that need but what about the problem of agricultural areas financially being able to indicate a participation in this program on a full-cost basis, repayment basis by December 31, 1963. It doesn't seem to me that the State gave the same concern to the agricultural areas north of the Tehachapies so far as their financial situation is concerned that it gave to Southern California in terms of when it had to have water.

MR. FAIRBANK: Senator, I would comment only that--

SENATOR COBEY: That is more of a speech than a question.

MR. FAIRBANK: I believe in my judgment the effort certainly was made on the part of both the State and the Metropolitan Water District to take this into consideration and I certainly wouldn't think it would be a fair statement to indicate that either the State or the Metropolitan Water District felt that only Southern California was in this dire need of water by a certain date. I think the Metropolitan Water District understood and certainly the State did that the needs for water in the Central Valley, in the San Joaquin Valley, were perhaps equally critical and so were these



needs in such areas as Santa Clara County and Alameda and other areas that are interested and have been working with the State to move forward on contracts.

SENATOR COBEY: But there was this difference, wasn't there, Mr. Fairbank, that in the repayment of full cost principles we were accepting the principle that the Metropolitan Water District urged upon us, and on the other hand when you come to agricultural water north of the Tehachapies this is a principle that actually constitutes an exception rather than the prevailing practice because the prevailing practice in agricultural water pricing north of the Tehachapies is that this price be subsidized and not be unsubsidized.

MR. FAIRBANK: I would comment, Senator, that your latter statement is certainly true. I would add however that it has been the concept of the State, it was the concept of 1106, I believe it has been the concept of the Metropolitan Water District that full payment of all reimbursable costs was the principle on which the whole program was based.

SENATOR COBEY: But as we pointed out this morning, that principle is not inconsistent with the further principle that among the various users there does not have to be full repayment of the cost allocated to that type of user so long as the total bill is met.

MR. FAIRBANK: I would agree.

SENATOR COBEY: I have no further questions.

CHAIRMAN TEALE: Senator Dolwig and then Senator Miller.

SENATOR DOLWIG: Mr. Skinner, insofar as the Metropolitan Water District is concerned you have member agencies. Do you have contracts with those agencies to furnish them water?

MR. SKINNER: We have contracts only with the United States, the State of California, and in one or two instances for surplus water with various agencies. Our constituent municipalities

--

SENATOR DOLWIG: Pardon me, you didn't get my question. What I was wondering, by this contract you contract with the State for a certain amount of water. Now, how do you sell that water to your member agency constituents?

MR. SKINNER: I was leading to that. The constituent municipalities of Metropolitan Water District are served in accordance with the provision of the Metropolitan Water District Act. The Metropolitan Water District is a quasi municipal corporation and it serves its component municipalities pursuant to the Act. There are no contracts between Metropolitan and the constituent agencies.

SENATOR DOLWIG: Are they compelled to buy the water from you that they need?

MR. SKINNER: No compulsion whatever. One of our unit constituent municipalities has only bought a matter, I think of about 6 acre feet through all the years since 1941 when the system was put in operation.

SENATOR DOLWIG: The reason I ask that question, I notice in paragraph 34 of the contract that there is an obligation of the district to levy a tax in the event there is insufficient

revenues to meet the payments on this contract.

MR. SKINNER: That is true.

SENATOR DOLWIG: That would apply to the areas even though they are not users of water?

MR. SKINNER: That is right. The tax base of the district so far as its annual tax levy is concerned is on the basis of ad valorem taxes. It has nothing whatever to do with whether the particular constituent municipality uses any water.

SENATOR DOLWIG: Now, furthermore, insofar as paragraph 30 is concerned your charge for use of project water, does that apply to the district as a whole or does this just apply as you say to your constituent municipalities? Now, this is 160-acre limitation.

MR. SKINNER: Yes. Well, of course, the sum total of constituent municipalities is the district as a whole. So that this surcharge provision in the contract is applied universally or would be applicable universally throughout the Metropolitan Water District.

SENATOR DOLWIG: I see. How are you going to enforce that?

MR. SKINNER: The provisions of the contract are such that the enforcement obligation is primarily a duty of the State, of the various constituent municipalities and their component organizations, water distributors, all the way down to the retail agency, retail purveyor and the water users have certain obligations in reporting, and this reported information goes to the State which would then use its power to determine whether or not the findings

as presented to it were correct. The State has certain prerogatives available to it to check these things and it could exercise them.

SENATOR DOLWIG: I'm sure it could.

MR. SKINNER: The contract in effect provides that the State police it.

SENATOR DOLWIG: Now, Mr. Skinner, did you participate in the negotiation of this contract at all stages?

MR. SKINNER: I believe I participated in all the conferences, yes, Senator.

SENATOR DOLWIG: And did you have any discussions relative to the initial project conservation facilities?

MR. SKINNER: We did, yes.

SENATOR DOLWIG: At the time of negotiations what was your understanding as to what projects were going to be built first?

MR. SKINNER: Well, to be built first?

SENATOR DOLWIG: Yes.

MR. SKINNER: I believe that the Oroville project and the aqueduct between Oroville and San Luis would be essentially the principal projects to be built first as far as we understood it at the time.

SENATOR DOLWIG: That would be the first under construction?

MR. SKINNER: Yes.

SENATOR DOLWIG: Mr. Skinner, have you read the Chartles, Main and Dillon-Read report?

MR. SKINNER: Yes, sir, I have read them.



SENATOR DOLWIG: Are you in agreement with the consultants or with the State's possibility of having enough revenue to build the Oroville Dam?

MR. SKINNER: When you bring up the question of being in agreement, there could be two connotations. In other words, the question might indicate the query as to whether we are in agreement as to the principles.

SENATOR DOLWIG: You mean the recommendations, agreement and recommendations. I don't want to put you on the spot. Are you in agreement with the Dillon-Read report and the Charles T. Main report that there will be insufficient moneys to construct Oroville Dam for a period of at least 12 years?

MR. SKINNER: We find this in regard to our own studies, that if the upward trend of construction costs continues as it has in the past, that supplemental financing will be required for the project facilities. There will not be, for instance, if you look into historical trends, you might find that there is somewhere around 2-and-a-half percent or 3 percent of inflation at least possible. We might even say probable, but nobody can be sure of the particular trend. However, we find no reason to disagree with the possibility that this financing may run somewhere around 700 million dollars short for the project facilities if this inflationary trend continues.

SENATOR DOLWIG: Was there any discussion at that time that if additional revenues were necessary, where they would come from? Would they come from bond procedures or general funds of the State of California?

MR. SKINNER: There is a very comprehensive opinion by the Attorney General on that problem and as we understand it the financing under the Burns-Porter Act does not preclude additional financing for the continuation of the program. In addition to that, the contract provides that Metropolitan may contribute funds to complete facilities which might not be completed within the financing provided to the State under the Burns-Porter Act.

SENATOR DOLWIG: Are there provisions in your contract for that?

MR. SKINNER: There are, sir, yes.

SENATOR DOLWIG: And would you be able to finance that as far as the district is concerned over and above your other provisions in the contract?

MR. SKINNER: So far as the financial resources of the Metropolitan Water District, I would answer in the affirmative. Of course it means that the voters of the district would have to vote the bond issues for the purpose.

SENATOR DOLWIG: How would that affect the discussion that you had with the Senator here relative to the total repayment policy? Would it affect it adversely or not? In other words, you have entered this contract presumably on the basis that there will be total repayment as far as reimbursable items are concerned, is that correct?

MR. SKINNER: That is correct.

SENATOR DOLWIG: All right. Now, in the event that you have to go into additional facilities and additional financing,

how will that affect the total payment of reimbursable items?

MR. SKINNER: Well, it could result in this situation, that the total capital costs to Metropolitan might be very little affected because as to the facilities which Metropolitan might complete by its own financing, the cost allocation would be practically 100 percent to Metropolitan anyhow under the State's program, so the ultimate cost to Metropolitan might not be very adversely affected merely because it happened to directly provide the financing for this particular project. I'm referring to the southerly extremities of the system, that is the east and west branch aqueducts.

SENATOR DOLWIG: All right. Let's go to that. On the assumption that on the basis of your negotiations the State will proceed, if they proceed as an initial phase of the construction there will be adequate money--I mean if this is the first stage of construction, there will be adequate money?

MR. SKINNER: We don't find there would be a shortage of money down to the south portal of the Tehachapi tunnels.

SENATOR DOLWIG: If you go then and build your other components of the plan, then there will be inadequate money to build the San Joaquin aqueduct, will there not?

MR. SKINNER: To go back to the answer to the previous question, we would say that there should be under the present financing no shortage with respect to the facilities to the south portal of the Tehachapi tunnels. Therefore there should be no reason to believe that the San Joaquin Valley--Southern California aqueduct to that point could not be financed under the Burns-Porter

Act.

SENATOR DOLWIG: All right. What about the financing of the remainder of the aqueduct system?

MR. SKINNER: That again would go to the question of how much inflation there may be. If the inflation does take place up to say 3 percent, there would be no money under the Burns-Porter Act financing to complete the east and west branch aqueducts.

SENATOR DOLWIG: Then, you are in agreement with the Charles T. Main Company to that extent?

MR. SKINNER: In the findings, yes.

SENATOR DOLWIG: Are you through with your answer, Mr. Skinner? I thought you were going to say something else.

MR. SKINNER: Well, I was going to refer to the fact that in the Charles T. Main report he gives a rather broad coverage of the possible shortage. In other words, if this happens there will be so much and so forth on down the line. So I was going to comment that our particular investigations indicated an agreement with the particular finding of Charles T. Main, that under certain circumstances, namely, that if we have a 2-and-a-half percent inflation compounded it would be around 718 million dollars for the State water facilities. Our own studies for the same percent non-compound type of inflation indicated about 700 million dollars shortage for the State water facilities.

SENATOR DOLWIG: May I ask you one other question? Insofar as your maximum entitlements are concerned under the contract, are you satisfied insofar as your negotiations were concerned



that San Luis is going to be built with complete certainty so you would be in a position to contract as you apparently did?

MR. SKINNER: We had every hope that the contract between the United States and the State would be consummated so that San Luis would go ahead.

SENATOR DOLWIG: Isn't it a fact that the Congress has not appropriated the money yet for San Luis?

MR. SKINNER: I believe that is correct.

SENATOR DOLWIG: In the event something should happen that San Luis is going to be held up and interfere with the time schedule that you have just indicated, then are you going to be able to get your minimum entitlement of water under this contract?

MR. SKINNER: I'll ask Mr. Fairbank to comment on that because it would go to the investigation of the State in respect to the physical effect of the San Luis Project, and I recognize that the storage there being limited to 2 million 100 thousand acre feet is not an absolutely limiting factor on the availability of water to the contractors in the early stages of the program, so it may be possible that San Luis could be dispensed with for a period of time. Would you comment on that?

MR. FAIRBANK: I think I would say, Senator Dolwig, that if all contractors contemplated to come into the program and came into the program, it would be essential for San Luis to be built if the Metropolitan Water District were to obtain the full entitlement. If they did not, there would be, I believe, the possibility of obtaining the full entitlement. I think it would

be fair also to conclude that the Metropolitan Water District in signing the contract took the position that there was not only reason, but very good reason for believing that the San Luis Project would go forward.

SENATOR DOLWIG: Hoping for the best. Now, may I ask another question insofar as I noticed the State indicated in their presentation that in the early stages of this contract that the State would be buying water from the Bureau of Reclamation at a cost of \$8.00 per acre foot. I think we neglected to ask how many acre feet it would be necessary to buy from the Bureau of Reclamation in order to carry out the contract that would be in existence at that time. Let's just confine it to two existing contracts. Have you any idea how much that would be?

MR. SKINNER: I believe the question was only concerned with the South Bay Aqueduct.

SENATOR DOLWIG: But after all, it is going to affect the over-all situation.

MR. SKINNER: A very small percentage of the 4 million acre feet, something like 200,000.

MR. FAIRBANK: I think, Senator, the answer here is that this would be an interim arrangement for the South Bay Aqueduct only for a period of time as was I think explained this morning, until the State facilities are in operation so as to deliver water into the South Bay from State facilities. This is an interim arrangement only and, of course, this would happen prior to any deliveries farther on down the system.

SENATOR DOLWIG: I was just wondering whether this asked for surplus water in the Delta at the present time to fulfill such commitments.

MR. FAIRBANK: Without question there is adequate water at the present time.

SENATOR DOLWIG: That is all the questions I have.

CHAIRMAN TEALE: Senator Miller.

SENATOR MILLER: Mr. Chairman, I intended to let those who were in favor of this project ask the questions, but a couple of things have occurred to me that kind of interest me. I believe Mr. Fairbank said a short while ago something to the effect that the contractors or if the contractors that are contemplated to come into the contract in fact come under the contract, who are these people that you have in mind, these prospective contractors?

MR. FAIRBANK: Senator Miller, this is certainly a question that the State is in much better position to answer. I can say only from my background--

SENATOR MILLER: You were with the State not too long ago. You answer.

MR. FAIRBANK: I was, sir, and the area to be served with water from the project as authorized under the terms of 1106 was to serve areas immediately downstream from Oroville, the Oroville service area, upstream in the Sierra Valley region by the two upstream reservoirs, the requirements in the Delta, the requirements in the North Bay region, the South Bay region, in the San Joaquin Valley, primarily in the Southern San Joaquin Valley, in Kern County and south of the Tehachapi Mountains in the area served by

the Metropolitan Water District, and other agencies and in the coastal area of Santa Barbara and San Luis Obispo Counties. All of these areas are potential contractors for waters from the State Project.

SENATOR MILLER: The areas are potential contractors, is that correct?

MR. FAIRBANK: Yes, sir.

SENATOR MILLER: Are these real live, going concerns?

MR. FAIRBANK: I would again say all of them are real live going concerns.

SENATOR MILLER: They are water districts that in fact exist today and at this time could enter into contracts with the State?

MR. FAIRBANK: Not entirely. As has been indicated in the Kern County area, although there are some water districts, there is the possibility of the need and very definite possibility of an over-all master district. There are districts in Santa Barbara and San Luis Obispo that are in a position to contract. There are areas in Southern California outside of the area served by the Metropolitan Water District, as was indicated this morning, that have a problem of formation of districts also.

SENATOR MILLER: As a matter of fact, are there not considerable areas that you mentioned in your original outline a moment ago that do not in fact have going water agencies to contract as contemplated or are prospective contractors as you describe them?



MR. FAIRBANK: My answer would be yes.

SENATOR MILLER: All right. Now, of those that were in business at the time you entered into your contract, did you query them as to their wishes or their desires?

MR. SKINNER: Senator Miller, our negotiations were directly with the Department of Water Resources. We did not as a customer agency, we did not confer with other customer agencies during that period, but we were informed throughout the entire period of the negotiations that the Department was conducting active negotiations with these prospective agencies and was keeping them thoroughly informed. As a matter of fact, we attended meetings where the representatives of these agencies were also in attendance so I believe that the information at all stages was very thoroughly disseminated through the entire prospective service area.

SENATOR MILLER: But you did not contact them as such in respect to the formation of your contract and the provisions thereof?

MR. SKINNER: We did not enter into individual negotiations with these agencies, no, sir.

SENATOR MILLER: And would you explain to me--will you turn to page 2, please. Will you explain the first sentence on the first complete paragraph beginning just below the center of the page, "In the negotiation of the contract every effort was made to give full and impartial consideration to the rights and reasonable expectations of all prospective contracting agencies." Would you explain to me what that means?

MR. SKINNER: This concept was indicated to us throughout the entire period of negotiations by the Director of Water Resources and in all of the negotiations very sincerely I would say the attitude taken by the Department was to thoroughly consider all contractors, not to merely confine their negotiations to the needs and requirements of Metropolitan.

SENATOR MILLER: This was the representations of the Department made to you, is that correct?

MR. SKINNER: And the negotiations were carried out by the Department in that spirit. The terms and conditions of the contract were not drawn to confer any particular privileges on Metropolitan Water District. They were drawn so that they would be equitably applicable to all prospective contractors.

SENATOR MILLER: Well now, am I to believe from that that you believe that the State of California through its Department of Water Resources contacted those in the South Bay Aqueduct area to determine whether or not provisions of your contract met with their approval?

MR. SKINNER: The South Bay Aqueduct service area was represented at the hearing in Santa Monica on July 18 and 19 of the Assembly Interim Committee on Water and I have every reason to believe that the representatives of that area were kept fully informed in regard to the contract negotiations.

SENATOR MILLER: But that isn't quite the question I asked you, is it, sir? Should I ask it again?

MR. SKINNER: If you would repeat the question.

SENATOR MILLER: Am I to infer from your answer that the approval was sought from the South Bay Aqueduct agency, for example, as to the provisions of your contract that you entered into with the State of California?

MR. SKINNER: Oh, on the specific question of approval, I don't imagine that that of my knowledge was the case.

SENATOR MILLER: Well, of my own knowledge it wasn't the case, so that really you didn't check with any of the other prospective contractors, did you?

MR. SKINNER: No, sir, we did not negotiate individually with the other prospective contractors.

SENATOR MILLER: Now, on the same page, about a quarter of the way down the page is the sentence that says: "The document by its terms constitutes a pattern for contracts proposed to be entered into by the State with other water agencies pursuant to the Burns-Porter Act . . ." There again you agree that you set up a document that becomes a pattern for all future contractors, is that not what that says?

MR. SKINNER: By its terms the contract does provide a pattern for subsequent contracts, I believe that is true, Senator.

SENATOR MILLER: And what you in fact did then was enter into a contract, strictly an agreement between you and the State of California, that affected every other prospective contractor for any of that water under the Burns-Porter Act and they were not in fact consulted. They were not in fact asked whether they approved or disapproved the provisions of the contract, is that not correct?

MR. SKINNER: We entered into this contract, as I stated before, with the product of many years of study by the Department of Water Resources and it was a contract in our belief which was equitable to other prospective contractors. I said our district was not attempting to secure individual advantages from the terms of this contract.

SENATOR MILLER: Well, your board of directors wouldn't let you go in and negotiate a contract for some individual disadvantages, would they?

MR. SKINNER: I don't think that they would.

SENATOR MILLER: You negotiated the best contract you could get, didn't you, and it was strictly a bilateral agreement, wasn't it?

MR. SKINNER: Well, we negotiated for what we thought was equitable, yes, sir.

SENATOR MILLER: What authority do you have to determine what is equitable for other districts in this State?

MR. SKINNER: Well, I would not claim--

SENATOR SHAW: Mr. Chairman, I don't think that is a fair question, to say they have determined for other districts.

SENATOR COBEY: That is what the contract says.

SENATOR MILLER: That is what the contract says, Senator Shaw, and I just read his own language back to him, "Every effort was made to give full and impartial consideration to the rights and reasonable expectations of all prospective contracting agencies," and I have a hard time finding where they did that.



SENATOR SHAW: The very obvious thing to be drawn is that first, they may have tried sincerely, and you may question that, but obviously by this contract they cannot require any other district to enter into a contract they don't want to. They are not bound to this one.

SENATOR MILLER: Oh, yes, they can, Senator Shaw. As a matter of fact they can enter into a contract if they want to by December 31, 1963, or they get no contract. They are right smack up against the wall. If you would explain how you can enter a contract and properly represent a client where you have to take water or you lose it forever, and the other fellow doesn't have to sell you except on his terms, can you explain to me how you get an equitable contract out of that?

SENATOR SHAW: I'm simply suggesting that this statement in here does not preclude a different kind of contract. It purports to be a pattern, but there can be other kinds of contract and certainly this contract cannot require any district to enter any kind of contract.

SENATOR MILLER: That is quite correct, but if it does enter into any kind of contract it must be a contract that is in accordance with the terms of this contract because he says so. "The document by its terms constitutes a pattern for contracts proposed to be entered into . . ." and so forth and Article 45 in the contract, page 45/1 "Contracts to be uniform", you read that and it says what I have perhaps rather clumsily been attempting to say here.

MR. SKINNER: Senator, I could only call your attention

to the answer to Question 23(b) that was given by the Department this morning in that connection.

SENATOR MILLER: Now, I wonder if I may ask a couple of other questions. I want to ask this question of Mr. Skinner. In your opinion, Mr. Skinner, will the users north of San Luis be required to enter into contracts prior to December 31, 1963?

MR. SKINNER: There is in this contract no requirement as to the time when another agency might enter into a contract with the State. There is in fact a provision which would permit the State to proceed when only 75 percent of the estimated costs have been contracted for in the project facilities.

SENATOR MILLER: Well then, it is your opinion that this so-called option is only limited to the buying of the surplus capacity of the aqueduct, is that correct?

MR. SKINNER: You are referring to the option provision in Article 8, Senator?

SENATOR MILLER: I believe I am.

MR. SKINNER: The terms of Article 8 go to the water of the minimum project yield which is not committed by contract by December 31, 1963.

SENATOR MILLER: Well, I'm not sure that I know what answer you have given me.

MR. SKINNER: Well, you said, would a contractor north of San Luis have to enter into--would the contract have to be executed by December 31, 1963.

SENATOR MILLER: Yes, what is the answer?

MR. SKINNER: Well, there is no necessary or essential inference in this provision that in fact all this additional water would be optioned under that and you are assuming, are you, that these agencies would immediately at that time take up any uncommitted water?

SENATOR MILLER: I'm not assuming what they would do. I want to know what they can do. This is a contract we are talking about.

MR. SKINNER: Well then, as far as the bare terms of the contract are involved, it would be possible for the remainder of the water to be optioned, I would say.

SENATOR MILLER: Well then, as a matter of fact couldn't the Metropolitan Water District by virtue of its ownership of water extend its domain into the Delta?

MR. SKINNER: Well, I don't think that I would answer that particular question in the affirmative.

SENATOR MILLER: You take up the options because the local contracting agency is unable to contract for whatever reason by December 31, 1963, but if they are able to contract in January of 1964 they are liable to end up contracting with you for water, isn't that true?

MR. SKINNER: This option is still limited to the extent that the water can be put to beneficial use. There is no present indication that Metropolitan could qualify to put 4 million acre feet of water to beneficial use within what might be termed a reasonable time.

SENATOR MILLER: Then, what do you have the option provision for?

MR. SKINNER: This option is by no means an option directed for the benefit of Metropolitan Water District. It is directed to the benefit of any of the contractors under these provisions.

SENATOR MILLER: At the time you signed the contract there weren't any other contractors, were there, Mr. Skinner?

MR. SKINNER: Somebody has to be first to sign a contract. That would be the case no matter who was the first to sign.

SENATOR MILLER: You hold all the cards the minute you sign the first contract. You may get somebody into this card game because they sign subsequent contracts.

MR. SKINNER: I think if you refer to Article 2 you will find we don't hold all the cards by any means.

SENATOR MILLER: That is all.

CHAIRMAN TEALE: I would like, Mr. Skinner, to refer back to the contract itself on page 17/6. A minute ago we talked at some length about the possibility that we may run short of funds and that Metropolitan Water District under the contract has the option to complete the transportation works as they need them so that they will have facilities through which to transport the water. I wanted to read directly from the contract starting at subsection 1:

"The district may provide funds to the State in such amounts



and at such times as may be necessary to enable the State to complete construction of such incompleated portion or portions of the project transportation facilities to the extent necessary for the transport and delivery of water to the district as provided for in this contract." Then, you move on down to the middle of the page and it says further, "That the amount of any funds so provided by the district shall be credited by the State against the district's payment obligation under the capital cost component of the transportation charge, but the district shall be and remain obligated to pay its share of any capital costs of the above-described facilities not paid for with such funds, together with its proportionate share of the operation, maintenance, power and replacement cost of such facilities."

I surmise then that any such contractors who move water through the facilities would be obligated to pay both the capital component furnished by the State and the capital component furnished by the Metropolitan Water District in their estimate of their total repayment, is that right?

MR. SKINNER: If the facilities directly financed by the Metropolitan Water District were facilities which in any event would be allocated 100 percent to the Metropolitan Water District, then--

CHAIRMAN TEALE: I'm talking about the transportation system.

MR. SKINNER: Yes.

CHAIRMAN TEALE: Now, suppose you picked up the cost

from pumping plant 4 on into Los Angeles and some other subsequent contractor were to move water through that reach of the transportation system, joint use, they would be obligated to pay their share of the full capital cost of that portion of the facility, wouldn't they? Let me see if I'm right in this, that the obligation of a district to pay the capital costs on transportation system only applies to those reaches which they use themselves, is that correct?

MR. SKINNER: Not to contribute costs for facilities which would be within the purview of subsection 1 on page 17/6. In other words, there are two separate concepts involved there. You cited the possible instance of Metropolitan Water District contributing to the aqueduct from pumping plant 4 south. If such were the case, the cost allocation to the respective contractors having transportation rights in that aqueduct would not be affected so that this contribution of the cost by Metropolitan Water District would merely be in aid of financing. It wouldn't upset any of the cost allocation provisions of the contract. Now, on the other hand if the State built the aqueduct to a certain point complete and Metropolitan Water District continued it from that point either alone or by joint venture with other contractors, then that would be a different situation.

CHAIRMAN TEALE: I want to get it clear in my mind in words of one syllable just what the guy has to pay. Let's say, for instance, that somebody up in Riverside County was also contracting for water to be delivered by the State. Metropolitan Water District completes say from pumping plant 4 south and I assume Riverside area would use a portion of that aqueduct to help

transport their water to Riverside, is that correct? Do I have the geographical picture straight?

MR. SKINNER: Well, if the contribution in aid of financing by Metropolitan was merely to afford the completion of works where there was no completion to that point otherwise by the State, then there would be no effect whatever on the allocation of costs as I understand it. The allocations would take place according to the provisions of the contract.

CHAIRMAN TEALE: So far as the Riverside people are concerned?

MR. SKINNER: So far as anybody having water transported in that particular reach of the facilities is concerned.

CHAIRMAN TEALE: The user would contract to pay his proportionate share of the aqueduct costs no matter who put up the money?

MR. SKINNER: That is true. The financing would merely be credited to the district against what it otherwise would have paid as a matter of allocation. The effect on the district would be the same whether it paid it as a matter of allocation.

CHAIRMAN TEALE: I can't understand this language or I don't understand it.

MR. SKINNER: That is in subparagraph 1 on page 17/6.

CHAIRMAN TEALE: Now, does this mean then that in calculating, as I read it, you as a district would receive credit for the amount which you put into the completion of the transportation facilities?

MR. SKINNER: We would merely be credited.

CHAIRMAN TEALE: Against your capital cost allocation?

MR. SKINNER: That is right.

CHAIRMAN TEALE: In other words, if the capital cost of the facility was 400 million dollars and you put in 100 million dollars, you would get 100 million dollar credit?

MR. SKINNER: And we would pay the other 300 million dollars as a function of the allocation procedure.

CHAIRMAN TEALE: Now, when you figure the cost that you are repaying, does that include the amount that you put in or just the amount up until the time you entered into the joint venture?

MR. SKINNER: Well, this would not involve any joint

MR. SKINNER: Well, this would not involve any joint venture, this particular instance, Senator, that you have cited here.

CHAIRMAN TEALE: It is a joint venture in that the State has the facility built to a certain point that is of no value to you until you have completed it.

MR. SKINNER: Now, I believe you are delving into the next situation in which, "The district may at its own expense, and on a joint venture basis if such an arrangement is made with other contractors having similar options connect to the project transportation facilities constructed by the State for purpose of receiving project water to which it is entitled under this contract." In that case there would be an agreement necessary among the joint venturers as to the arrangements for acquiring, constructing,



operating and maintaining and so on, but in the previous case where it was merely a contribution of funds with no other aspect or no other complication, it would merely be a direct contribution in lieu of having the cost allocated under the procedures of the contract.

CHAIRMAN TEALE: In lieu of having additional costs allocated?

MR. SKINNER: Well, the total of the cost allocated would in no way depend upon whether this contribution were made. It would be the same total.

CHAIRMAN TEALE: What I'm trying to get, if the total cost of the facility is 400 million dollars, the amount that the State put in and the amount that Metropolitan Water District put in to complete whatever reach they had to complete, and the State put in only 300 million dollars of that total cost, would the 100 million dollars contributed by Metropolitan Water District be deducted from the amount the State already had invested or would it be deducted from the total cost of the facility?

MR. SKINNER: Well, Senator, I think the easiest way to answer that is merely this, that if the total allocation to the district were a particular amount of money, say 400 million dollars, that would be the district's participation in the reaches involved. Now, whether or not that be solely a matter of cost allocation on the basis of financing entirely by the State or whether the district contributes part of that directly and pay the rest as a matter of cost allocation would make no difference. The district's share would be the same and it would be made in accordance with the cost

allocation provisions of the contract. That is the way I understand the procedure.

CHAIRMAN TEALE: That is the way I understand it should be done, but I don't understand it from the way the contract is written.

MR. SKINNER: I think in answer to that same question the State pointed out that the matter of allocation of cost was in no wise affected by this possible partial financing by the district.

SENATOR DOLWIG: Mr. Chairman, I have one more question along the same line. I'm just wondering whether the interpretation of the contract is correct relative to the termination of the contract. Is it correct that at any time between 1964 and 1972, that if there is no contract for transportation facilities south of San Luis, that the district may then and at any time during that period terminate this contract regardless of how much other money has been expended by the State on any transportation or conservation facilities?

MR. SKINNER: No, I believe not, Senator. The option of the district to terminate only has a period of a few months within which it may be exercised.

SENATOR DOLWIG: Page 17/5?

MR. SKINNER: Yes.

SENATOR DOLWIG: It is specifically paragraph (e). Of course that also relates back to your delivery dates insofar as 1972 is concerned.

MR. SKINNER: This option expires on March 31, 1965.

SENATOR DOLWIG: Well now, wait a minute, provided the district has not heretofore given such notice. This is a question of notice. "This option shall expire upon the letting by the State of a contract for construction of said facilities at any time after March 31, 1965." But if no contract--my question was if no contract has been let for any transportation facilities south of San Luis at any time between 1964 and 1972, that the district may then by giving six months' notice terminate this contract.

MR. SKINNER: I think the language is clear, Senator. I can't by any comment clarify that any farther.

SENATOR DOLWIG: That is my interpretation. I wonder whether you agree with it.

MR. SKINNER: Well, you first indicated, I believe, that the district at any time between December 31, 1964, and what was the other date?

SENATOR DOLWIG: 1972, the date for first delivery under the contract. That is your table A on page 6.

MR. SKINNER: Well, if the district does give such notice, the contract is terminated. Now, if the district has not given such notice, the option then expires as soon as the State lets a contract for construction of such facilities at any time up to March 31, 1965.

SENATOR DOLWIG: That isn't what it says--at least my understanding of the English language, unless my understanding of the English language is not very good. That is all I had.

CHAIRMAN TEALE: Senator Williams.

SENATOR WILLIAMS: The option that the district has to continue the contract at no greater cost--now, is that the usual terms that you write into a contract, that you don't get a chance to re-negotiate costs because of increased operational expenses?

MR. SKINNER: Well, Senator Williams, I believe that the construction to be put upon the answer by the State to that question does not go to the cost of water as such. The cost may increase in dollars per acre foot or otherwise the provision in the contract merely says that the costs to the district shall not be greater than they would have been under a continuation of the same provisions that are in the contract. In other words, the district will be entitled to a continuation of the same method of allocation of costs.

SENATOR WILLIAMS: Are you referring back to another part of the contract in which it states that amounts of money will go up as additional facilities are added, is that right? Is that what you are saying?

MR. SKINNER: The Delta water charge or the rate upon which the Delta water charge is derived presumptively would rise as additional facilities are constructed to augment the supplies that develop.

SENATOR WILLIAMS: It merely says the same amounts. It doesn't say anything about other facilities, just the same amounts of water. The district may elect to receive continuous service of the water after expiration of the terms of the contract



in the same amounts. Now again then do we refer back to this other part of the contract where if additional facilities are added then there will be an increase in price to cover those?

MR. FAIRBANK: Senator--

MR. SKINNER: The contract does provide that the district must continue to pay the Delta water charge. Now, if the Delta water charge increases, the provisions of the contract require the district to pay that so consequently this provision in no way exempts the district from paying whatever the Delta water charge may be on account of these additional facilities.

MR. FAIRBANK: And the amounts of water, Senator, referred to the entitlement under the contract, 1 million 500 thous and acre feet.

SENATOR WILLIAMS: The fact that this is a long-term contract, I'm thinking of one dealing with the valley up here that the State got into and I'm just wondering how we are going to come out with this one. I refer to Squaw Valley primarily, some of the State's negotiations in that. That is all I have, Mr. Chairman.

CHAIRMAN TEALE: Senator Shaw.

SENATOR SHAW: Going back to 17/5, subparagraph (a) says, "The State shall make all reasonable efforts to commence construction of the project transportation facilities on or before June 30, 1963." Now, from that point on am I correct in understanding that first, if any contract is let for construction of any of the transportation or any part of the transportation facilities south of San Luis Canal, why then you can't get out of the contract?

MR. SKINNER: That would be my understanding.

SENATOR SHAW: In other words, they must have done nothing at all south of San Luis as far as entering the contract. Second, you could not cancel the contract if bonds had been issued?

MR. SKINNER: That I believe, Senator, is correct, either one of those two facts would cut off the district's option to terminate the contract.

SENATOR SHAW: In other words, unless really no start is made at all by December 31, 1964, you are stuck with your contract?

MR. SKINNER: As I interpret the contract, that is correct. In other words, the commencement of one small project south of San Luis would sell the transaction.

SENATOR SHAW: All right. Now, switch over to 45/1 where we are talking about this contract perhaps doing more than setting the pattern for all future contracts. Do I understand this correctly to lay down very clearly that if you are going to be made to pay total allocated capital costs together with interest thereon within the project repayment period, you don't want to enter this contract unless everybody else has to do that, too, is that not the basic thing? You wanted to be treated the same?

MR. SKINNER: That is correct, Senator, substantially uniform with respect to basic terms and conditions and except as otherwise provided in Article 45 it is.

SENATOR SHAW: We'll get into that in a minute. The particular thing is you want everybody to pay all the capital costs with interest within the project repayment period, is that

right?

MR. SKINNER: That is the condition in the contract.

SENATOR SHAW: Since you are one of the bigger customers you don't want to enter a contract unless they are at least going to abide by that basic thing, is that correct?

MR. SKINNER: I believe that it would be correct to say that was the attitude of our board of directors, that the project be in fact self-liquidating by participation of all contractors in accordance with what costs would be allocated to them under the cost allocation principle set forth.

SENATOR SHAW: Now, if districts who have not contracted yet will subscribe to that basic premise, then they are given certain latitude with respect to repayment, are they not?

MR. SKINNER: They are, sir, yes.

SENATOR SHAW: For instance, the first payment can be deferred nine years under sub-section 1. That is possible in the case of financial hardship. After the allocation is made it will be possible to defer the first payment for nine years?

MR. SKINNER: That is correct, Senator.

SENATOR SHAW: Then a further leeway is under number 2, there can be varying installments. They don't have to be the same amount each year.

MR. SKINNER: The installments could be graduated so that additional installments could be smaller than the later ones.

SENATOR SHAW: Well mixed up?

MR. SKINNER: This doesn't provide a specific limitation on how they might be varied.

SENATOR SHAW: And with respect to agricultural water repayment can be in certain cases deferred to delivery date of water?

MR. SKINNER: That is correct.

SENATOR SHAW: 25 percent of the use is agricultural water?

SENATOR COBEY: 25-plus. It has to be in excess of 25 percent.

SENATOR SHAW: I'll say 26 percent then.

SENATOR COBEY: Okay.

MR. SKINNER: This is as estimated by the State.

SENATOR SHAW: That is all.

CHAIRMAN TEALE: Any further questions?

SENATOR DOLWIG: One more question. Mr. Skinner, would you like to express an opinion as to whether you think any legislative action is indicated relative to this contract?

MR. SKINNER: Well, I can only refer you to Article 2 of the contract--do you mean that?

SENATOR DOLWIG: That any action ought to be taken by this Session of the Legislature?

MR. SKINNER: Well, our board of directors has approved this contract as it stands so I think it would be correct to go on record to say our board would prefer to stand on the contract.



SENATOR DOLWIG: Would you oppose any legislation which would affect this contract?

MR. SKINNER: I would have to take that question back to the board in due regard to the specific legislation I would think.

SENATOR DOLWIG: Would you have any opposition to any legislation that was introduced to take care of the recommendations by the Dillon-Read report relative to legislation that was indicated in the report that should be passed?

MR. SKINNER: I wouldn't think at this stage I should make a categorical denial of the possibility of accepting all possible legislation.

SENATOR DOLWIG: Pardon me, I'm referring--are you familiar with the recommendations of Dillon-Read?

MR. SKINNER: That is a pretty broad field, what the Dillon-Read report recommended. I don't think I should attempt to answer that question without having submitted it to the board.

SENATOR DOLWIG: All right. Thank you.

CHAIRMAN TEALE: Any further questions?

SENATOR WILLIAMS: No.

CHAIRMAN TEALE: Gentlemen, thank you very much.

SENATOR DOLWIG: Mr. Chairman, I have one other thing. Mr. Goldberg is here. In view of the testimony that was given by Mr. Skinner relative to the lack of funds to build all of these facilities, in view of the fact that the people have passed Proposition No. 1, made these funds available, I would like to ask Mr. Goldberg to submit to the Committee some answers to questions here

so we know what the situation is relative to it. I'll be very glad to give them to you in writing, Mr. Goldberg, or I'll list them here and see whether any of the Committee have any objections to them.

CHAIRMAN TEALE: Let me make this suggestion, put them in writing and we'll take them up first thing Tuesday morning.

SENATOR DOLWIG: All right. I'll get them to you, Mr. Goldberg.

CHAIRMAN TEALE: Mr. Skinner, I wish to thank you for giving us your testimony and we will now recess the hearing until 10:00, A.M., on Tuesday morning.

MR. SKINNER: Thank you, Mr. Chairman.

(Thereupon the hearing was recessed until Tuesday morning.)

Tuesday, February 14, 1961, 10:00 O'clock, A.M.

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CHAIRMAN TEALE: Ladies and Gentlemen, we are going to go to work at this time. We are a little short of Committee members, but we are in competition with the Transportation Committee meeting downstairs and others will be here shortly. This hearing today is a continuation of the hearing which was started on last Friday on the terms of Metropolitan Water District contract. We'll hear from several other agencies who will be either directly or indirectly affected by the terms of the contract. If there are other agencies who wish to be heard and who are not able to be here at this particular time, we will be happy to accept written statements from them. We hope that we will be able to publish the record of this hearing and we want to set a deadline of two weeks from this date for the submission of any further supplementary statements.

I think that on Friday we established that this is an important contract and has very far-reaching effects and we wish to delve into that further today.

Our first witness is Mr. Allen Bottorff, who is the spokesman for the Kern County area of the San Joaquin Valley. Mr. Bottorff.

MR. BOTTORFF: Mr. Chairman, I believe that all of the necessary copies of my statement are in the hands of Mr. Lapham.

Mr. Chairman, Members of the Committee, I am Allen Bottorff,

farmer, of Bakersfield, here in response to your invitation to comment on the water service contract between the State of California and the Metropolitan Water District of Southern California. I have also been asked by the Semitropic Water Storage District of Kern County, of which I am a Board member, to represent that District at this hearing. In doing so I shall call upon the District's Engineer, Mr. R. M. Edmonston, and the District's Board Chairman, Mr. Sam Barling, to assist her if it will better serve the purpose of your hearing today.

When Mr. Lapham, your staff Director, called me about this hearing he indicated that a statement I had made on Jan. 12, 1961, before the Conference on Water Policy at the University of California, Davis, had come to his attention; and that your Committee would be interested in my views. A portion of this statement referred to the State-MWD contract and included certain personal observations with respect to it.

As I am not sure of the extent of the Committee's acquaintance with this statement, and because it is preferable that reference to it should not be entirely out of context, I have appended a copy hereto for your information.

The portion that refers to the State-MWD contract is found at pages 4 and 5. There I pointed out (quote):

"Examination of this State-Metropolitan contract will reveal, I am sure, many fair and equitable provisions. I am confident, however, that the formulae which establish cost allocations must be improved--with respect to the features mentioned--and this would not be to the detriment of either the State's or the Southland's best economic interests, in my opinion.



"If it is the intent to have the State-Metropolitan contract stand as a model for all future contracts--if that contract is to reflect basic State water policy--changes should be made now which would more equitably establish the cost allocation formulae. Options and Delta charges should also be reviewed and changed if equity would be served. This could be accomplished either through further negotiation, and amendment of the contract by the parties involved; or by legislative action. I believe that review of the facts, including all economic considerations, is imperatively needed; and that re-opening of negotiations between the Department of Water Resources and the Metropolitan Water District, with other affected parties participating, might prove the best solution to this problem." (unquote)

In suggesting the "re-negotiation" route for ironing out some, or possibly all, the problems induced by the presently executed State-MWD contract, I am not unmindful of the right of the Legislature to prescribe such terms and conditions as it may desire and approve with respect to water service contracts made by the Department of Water Resources under the State Water Resources Bond Act.

Neither am I unaware that negotiation, or re-negotiation, as suggested here, requires much technical skill, engineering, financial, and economic determinations and decisions which are of an administrative character. It is evident that the language of the Bond Act charges the State Department of Water Resources with certain responsibilities and provides it with fundamental rules as

well as rather broad discretionary powers with respect to ultimate execution of water service contracts. It may be noted that Section 36 of the existing State-MWD contract now permits changes in its terms by mutual agreement; but other terms of this contract severely limit the period of time within which changes which may be prompted by considerations of equity can be made.

It has been indicated that one critical problem area is that of cost allocations. In considering this, it should be noted that the language of the State-MWD contract indicates at least three, and perhaps four, classes of export water are to be taken from the Delta: (1) M & I water; (2) Agricultural water which must take substantial deficiencies not taken by M & I and other preferred users in drouth years; (3) surplus water. The fourth would be that water use specifically protected by acknowledgement in the contract of the County of Origin and Watershed Protection Acts.

In considering what is fair and equitable when allocating costs to agricultural water exported from the Delta, it should be well understood that not one area alone is involved. While Kern County has been pointed out as an area where broad-scale agricultural water use is anticipated from the project (and this should be true), actually agricultural water use will exist in all parts of the program, just as M & I water use will exist in all parts. Any suggestion made here is equally intended for all areas.

(The Chas. T. Main Report, Oct. 1960, for instance, places Delta-export irrigation water demand from the project at year 1990 in North Bay Aqueduct area at 71,000 acre-feet; South Bay Aqueduct

area, 8,000 acre-feet; Santa Barbara County, 59,800 acre-feet; San Joaquin Valley, 1,035,400 acre-feet; Ventura County, 13,400 acre-feet; Southern California Coastal Plain and Coastal San Diego Area, 154,400 acre-feet--Coastal Plain and Coastal San Diego Area, 154,400 acre-feet--((Page 7-8 of the Main Report)). Whether or not we completely agree with the figures, the indications are quite clear.

It should be pointed out that there is much more to consider than just the relative amounts of water, and I emphasize "amounts", that may be available to agriculture and other users in water short years, when considering what is fair and equitable in allocating costs. Other factors which tend to affect and substantially reduce the value of the unfirm water assigned to agriculture, are as follows:

1. The effect on farm income due to limitation on what crops may be grown;
2. The risks taken in carrying out planting programs;
3. The necessity of maintaining pump and well investments;
4. The desirability of improving water conservation wherever possible through underground replenishment and storage, which can only be accomplished at substantial added cost to agriculture for recovery of such water.

Such considerations as these and, no doubt, others should occupy the attention of those who might be attempting to work out this problem around a negotiating table.

I would like to add that improving this cost allocation



situation alone, important as it is, will not entirely solve the problems of low-assessed value areas--urban, or agricultural in their potential water demand--when they attempt to work out repayment of ultimate, allocated costs.

When the Bond Act and related State law are carefully considered it seems possible that a fair share, if not all, the remaining problems might be solved through the existing administrative powers and procedures of the Department of Water Resources, provided a few of the inflexible and time-limit terms now found in the presently executed State-MWD contract can be relaxed.

One of the problems to date has been that of developing a full understanding of this contract and what it means quantitatively; that is, in dollars and cents figures, to other agencies and areas. However, on the basis of the figures that have been available, it is evident that even with much lower cost allocations, in this case we would say to agriculture as a result of these considerations, unless greater flexibility of terms can also be achieved, it will be most difficult, if not impossible, for many agencies and low-assessed value areas, particularly agricultural, to participate in the State Water Program.

Speaking for the members of Board of Directors of the Semitropic Water Storage District I would say that they and their Engineering Consultants are most anxious to cooperate in every way possible to adjust and reduce these problems, to be able to participate in the State Water Program as now defined by the State Water Board Act and related state law. The Board strongly supports



the view that this Program should be of wide, rather than limited service.

SENATOR COBEY: You mean the State Water Bond Act?

MR. BOTTORFF: Well, again a little typographical error. I hope you will all use your pencils. I do thank this Committee for this opportunity to appear.

CHAIRMAN TEALE: Mr. Bottorff, I gather you are not entirely happy with a few of the provisions in the contract which you refer to as inflexible and time-limiting. You were here Friday?

MR. BOTTORFF: Yes.

CHAIRMAN TEALE: You heard both the State Department of Water Resources and the Metropolitan Water District say that they were happy as the contract now stands?

MR. BOTTORFF: I heard at least one. I didn't get here as early--

CHAIRMAN TEALE: Well, suppose that they are both happy. How do you suggest we get to re-neogitate? I know that is a nasty question.

MR. BOTTORFF: It isn't so nasty, Senator Teale, as it may appear offhand. Actually there is no way that you can compel re-negotiation and that is recognized. However, there is an economic interest in this question that should, if properly brought to the attention of the people that are involved, and flow in the proper way that I think it can be, that may cause that to happen, and I would hope that it would happen quite soon if so.

CHAIRMAN TEALE: You are talking about pressure of

public opinion?

MR. BOTTORFF: Pressure of public opinion and the facts involved. It is a matter of economic interest and if this matter isn't solved, there will be a damage that will extend both south and north.

CHAIRMAN TEALE: Would you be a little more specific back on page 3? Are you referring to part of this 1963 deadline?

MR. BOTTORFF: Yes. I do have the deadline in mind, yes. It is a limiting factor of considerable significance.

CHAIRMAN TEALE: Now, before we start questioning, I want to remind the Committee that we probably won't be able to run beyond 12:15 this afternoon so if we could make our questions pertinent. Senator Cobey.

SENATOR COBEY: I'll defer to some other members of the Committee.

CHAIRMAN TEALE: Senator Richards.

SENATOR RICHARDS: I have one or two, but I think I should, too, defer.

CHAIRMAN TEALE: Who wants to be first?

SENATOR MILLER: I'll be first.

CHAIRMAN TEALE: Senator Miller.

SENATOR MILLER: December 31, 1963, date, you feel that may place a limitation on some of the agricultural interests that you represent, is that correct, sir?

MR. BOTTORFF: That date comes quite early for some of the problems that are involved that need more time perhaps for solution than that time. However, the principal one of the things

that is involved there is that it is a deadline that has its effect on the capacity to negotiate as far as that is concerned.

SENATOR MILLER: It provides almost unilateral negotiation if the State wanted to make it so, doesn't it? You either have to do what they say by that time because there is no way to hold out beyond that time, is that not correct?

MR. BOTTORFF: Well, any deadline on the power to negotiate, I don't think it makes any difference what type of contract procedure you have, it is a limiting factor on the ability to be on equal terms in negotiation.

SENATOR MILLER: Wouldn't it be much better, Mr. Bottorff, if you had the time up through December 31, 1963, in which to negotiate, and after that time then it would be free for all or open to all comers on the basis of negotiation for the putting of water to a beneficial use and an agreed upon taking in agreed upon amounts? Would that jeopardize anybody's right?

MR. BOTTORFF: Well, in the contract as it exists today, there is some opportunity for the type of free for all you are speaking about among those that have contracted to that date, but that is the limit there.

SENATOR MILLER: But I'm talking about those who haven't--let's assume--apparently I'm not saying this correctly or speaking clearly about it, but let's assume on December 31, 1963, there are still just a few contractors, the San Bernardino and Metropolitan Water District, so that on January 1, 1964, there are only two people who have contracted. Those two as I understand it have a right to then contract for any portion of the

difference between 1 million 500 thousand plus whatever the San Bernardino amount is, and the 4 million acre feet, is that correct? Am I right?

MR. BOTTORFF: I believe you are. They would be the two that would be able to contract.

SENATOR MILLER: Wouldn't it be much more equitable--

MR. BOTTORFF: There may be some attorney that could additionally answer that question. That is the way I read it.

SENATOR COBEY: This is a question of fact.

SENATOR SHAW: They have to be able to put it to beneficial use.

SENATOR MILLER: Yes, and that is something we have been arguing about for years. Now, at that point, where do you see any consideration or any benefit to the State in locking it up against everyone but present users if the two present contractors do not have to exercise their options as of that date?

MR. BOTTORFF: Well, it would be rather difficult to see any advantage to the State program.

SENATOR MILLER: Because they do not have to exercise their option on that date, do they?

MR. BOTTORFF: That is right.

SENATOR MILLER: They can exercise it from then on through--somebody was talking about 1990 or something like that.

MR. BOTTORFF: Well, I think probably the question of decision on construction would then be made and there would have to be the normal physical limitation of what they could contract



for or establish by that method and it would happen.

SENATOR MILLER: But the only thing that would be involved would be the construction--the determination of the size of that ditch. Do you think of anything else that is really involved there at that time?

MR. BOTTORFF: Well, the ditch is one element. There are all the other factors that are required, pumps--

SENATOR MILLER: Well, but that is determined--

MR. BOTTORFF: The high line pipe conduits and things of that sort, they are involved. I'm not trying to get into any technical reply to this.

SENATOR MILLER: But between then and September, whenever the end date is, September 30, 1964, it seems to me that if you have the power and the ability to contract that would be carrying out the policies as set forth by the Department and they permitted you to contract, would be carrying out the policy set forth by the Department and right through the planning up through the bond election. They talk about giving you folks some water if you can take it, right?

MR. BOTTORFF: I believe that is what the objective was and that is what we were interested in.

SENATOR MILLER: Well, that would seem to be a comparatively minor change in the contract. Would you be in favor of such a change?

MR. BOTTORFF: I think any change that would take the inflexibility out of the contract such as that, which I

believe it is inflexible, would be good.

SENATOR MILLER: You would be in favor of that or any change that would make it flexible?

MR. BOTTORFF: Make it more flexible. It seems to me it is very rigid as it stands for other contractors.

SENATOR MILLER: All right, sir. Now, may I ask you another question. You represent the Kern County area, is that right, which is generally referred to as the Kern County area?

MR. BOTTORFF: As a matter of fact, in this instance I specifically represent the Semitropic Water Storage District and there are other district that are going to make their statements here, too.

SENATOR MILLER: I see.

MR. BOTTORFF: And Kern County is not at this time organized as an agency to make a statement. It may have some comment to make through the County of Kern. It may submit, but there is no agency over-all.

SENATOR MILLER: There is no over-all agency at this time?

MR. BOTTORFF: Not in Kern County.

SENATOR MILLER: Unfortunately I don't know the boundaries of the district you do represent, so if I'm asking questions outside of your bailiwick, I expect you to tell me.

MR. BOTTORFF: It is in the mid-central part of the county, it is valley area, 224,000 acres.

SENATOR MILLER: Are some of the large individual holdings a part of that?

MR. BOTTORFF: There are some. We have 1978 owners in 224,000.

SENATOR MILLER: I see. Now, have you estimated what your, or do you have an estimate of what your water cost in that area is going to be on say a per acre foot basis under this plan should you be able to contract?

MR. BOTTORFF: That is from this program as the costs are now allocated?

SENATOR MILLER: Yes.

MR. BOTTORFF: Well, we have some information on the canal-side price that we received on November 28 at which time we held an all-day meeting with the Department, several members of the Market Division, and we have some information on that. In fact, we have been told that additional information would be provided and I think it is in the process of being developed, but our particular district is able to receive water from what would be called the first canal level as it moved southward from the San Luis Reservoir. The elevations there, I think the take-out point of the reservoir is 360 and by the time it gets down to the pumping plant, I think it is pumping plant 4 or maybe 3--at any rate it is 310 feet, if I'm not mistaken. We can take water for Semitropic from that particular elevation and they have indicated that the average price on a 1990 demand assumption over the pay-out period and taking into account most of the elements of cost or all of the

elements of cost, and as they saw it on the demand which we indicate as an assumption at the canal-side, it would be about \$13.25.

SENATOR MILLER: \$13.25?

MR. BOTTORFF: Yes, and to that as far as the user is concerned would be added the costs of bringing the water to the individual ranch through the district's facilities and all the expenses incident thereto.

SENATOR MILLER: What is your estimated cost then to the user?

MR. BOTTORFF: Well, there again our principal source of figures is calculated from information that was developed at the time the district was formed and a very good over-all distribution system, I believe, was calculated for the whole district at an average cost per acre foot based then on certain assumptions as to the developing demand of about \$5.25, and then there would be the added cost of administration of the district itself, so it might be as much as \$6.00 or more.

SENATOR MILLER: So you are a shade under \$20.00, is that correct?

MR. BOTTORFF: Perhaps based on this information we have had. The only thing is that insofar as the costs are concerned during the early years of the program, the indications of the charges that would be made are very much greater per acre foot than that. That is an average on the 1990 demand based on pay-out of a long number of years and another feature there that we are not quite sure of insofar as what the program of contracting might



amount to eventually is this question of how do you meet the early years of the high capital repayment and the fixed O and M that is based upon similar formulas?

SENATOR MILLER: Did I not see a figure of \$36.00 for the early years?

MR. BOTTORFF: Oh, it could be much more than that. If you take 10,000 acre feet and divide it into a million dollars, you get a lot of money, or take 50,000 acre feet and divide it into a high repayment--that is the question of--

SENATOR MILLER: The figures we are going to use are not going to be 50,000 or 5,000, it is going to be the number of acre feet your people are able to take divided into the cost.

MR. BOTTORFF: The point is, the build-up in all of this is so far mostly calculated at the State level. As an organized district we are engaged in processes of reaching our own conclusions in this matter of demand and it will be influenced by the costs as far as that is concerned and it will be based on what we finally would be able to get in the way of a repayment program, dividing by the number of acre feet of annual deliveries.

SENATOR MILLER: Assuming that most of your people are not going to be raising poinsettias or perhaps avocados and some of them may be even raising rice, tell me, what is the figure that is the outside limit for your average water user? What are we talking about?

MR. BOTTORFF: Well, of course, in the districts that we are talking about, we are largely engaged in basic commodity

crop production such as cotton, beets, potatoes, and there is very little vineyard. In fact, I don't know of any vineyards or tree crops in the area. We are now in the process, of course, of farming with pumped water entirely and our costs there are running in the order of I would say \$6 to \$10 per acre foot, and I would say that when it comes to making a return against present prices and crops, that we are operating, I'd say successfully, but certainly without a great margin. It is a very difficult thing to show much profit.

SENATOR MILLER: You believe if you get over \$6 to \$10 an acre foot you either have to change the type of your agriculture or else you are not going to be in the business?

MR. BOTTORFF: Well, it is not exactly as easy as that to say. We have a declining water table. We know that costs may go up, but the point would be that deliveries of this water wouldn't occur until 1969 or 1970, and 1971, even the start of them, and what will be the conditions at that time is an unknown thing. There are some indications that there could be improvement in the agricultural picture. However, it is also quite true that agriculture is very competitive and that won't change, I don't think. It is hard to say just what it will be by the time--

SENATOR MILLER: What you are saying is that if hay goes to \$200 a ton you might be able to afford the water, is that right?

MR. BOTTORFF: Well, if it went up \$5, \$10, or \$15 a ton, it would make a great deal of difference, to be honest with you, Senator.

SENATOR MILLER: But isn't the farmer's plight, as I hear him protesting, and he is a good protestor, he usually says that as the prices go up all other costs go up at least proportionately and usually they are ahead of his. So how does the farmer come out?

MR. BOTTORFF: Well, the experience the last two years certainly indicate that among all the basic industries, that farming returns have drifted downward while other returns have gone upward. It is reflected in what is called the parity index and it is interesting to recognize that at the time some of the figures were prepared as to the capacities of the district to handle this program, that they used the parity index that was up in the order of 79 percent or 80 percent I think it was which was the basis for the years 1947 to 1956, and we are on the 81 percent figure at the present time.

SENATOR MILLER: So inflation alone just doesn't take care of this?

MR. BOTTORFF: Actually this program might be greatly modified by employing methods of cost allocation that would be strictly fair, and not cost relatively too much for any user in the project service area.

SENATOR MILLER: One last question. If you cannot afford the water and I would assume that you need the water, therefore in order to get the water, it must be subsidized?

MR. BOTTORFF: Well, I don't think that is necessarily the case and we would shun the word as far as possible. This situation is one where you are building a program that largely

encompasses the need to actually provide for growth and when we think in terms of that growth as it relates both to the individual district and to the community at large, there may be some elements there that would properly fit into the picture and greatly reduce the fear that what we are thinking about is a subsidized program.

SENATOR MILLER: Would you say that last again, please?

MR. BOTTORFF: I say, if the facts with respect to growth were properly fitted into the picture, it would greatly reduce any idea that what we are thinking about is a subsidized program.

SENATOR MILLER: I see. All right. But to follow that up even under those conditions, let me see if I can pick a better word. I realize "subsidy" is a very dirty word to a farmer. If there could be an equalization to lower the cost of water, how would you propose that be done?

MR. BOTTORFF: At least one step would be in this matter of cost allocations based upon the determination of real equity.

SENATOR MILLER: But that assumes a revision of the contract.

MR. BOTTORFF: That is one of the negotiation problems. You see they have pretty well fixed some of the relationships by these formulas. They are not dollars and cents figures, but they do work out that way.

SENATOR MILLER: But if we would assume, and I'm sure there are some who suffer under this delusion, that the



Assembly may not be interested in changing this contract at this Session, then what do you do, sir? How do you equalize the cost?

MR. BOTTORFF: Well, of course, you may reach a decision where you don't do anything like that and the end result might be that you wouldn't have customers in the area we are talking about and it could happen--you know, farming is something you can go into or go out of as far as that is concerned.

SENATOR MILLER: I understand.

MR. BOTTORFF: The point I'd make is that in a situation like that for the delivery of not any greater amount of water than would be delivered anyway to the southland, their costs would rise so there is somewhere room in this thing to do some real honest to goodness work on this problem of cost allocation.

SENATOR MILLER: Well then, their costs would rise in the southland. That is the industrial, municipal user.

MR. BOTTORFF: If they didn't build the capacity in the program. Our understanding is that if the capacity was not built into the program for service to such areas as we are talking about in my district and in the general valley agricultural field the cost for the amount of water that the facilities would be required to deliver to them would actually rise substantially compared to what it works out under the program of cost allocations as it now exists.

SENATOR MILLER: Now, this applies particularly to those of you who are taking from pumping station 4. How about those who take from station 6? Do they have all the problems and

perhaps some additional problems?

MR. BOTTORFF: The program that would serve Kern County would be at least two lifts above the one in the district I am located in.

SENATOR MILLER: You are going to take--

MR. BOTTORFF: They have a higher indicated cost than the ones I have told you about for the reason that they have adequate capital facilities and they have the energy requirement for lifting the water to the higher levels.

SENATOR MILLER: All right. I'll defer that question to others.

SENATOR COBEY: Mr. Bottorff, if these unilateral options to preempt the remainder of the minimum yield, 4 million acre feet, by the two existing contractors were removed from this contract, could your people live with it?

MR. BOTTORFF: I would say that would depend upon the success we have in this matter of cost allocations and also the success that we have at the administrative level figuring out the way to handle these early costs and there may be other factors that would enter into the picture, but it seems to me that the problem resolves around the dollars and cents angle.

SENATOR COBEY: Unless the parties are willing to remove these options, the Legislature in this Session under the terms of this contract is the only body that can do that, isn't that right?

MR. BOTTORFF: I would assume that is true.

SENATOR COBEY: And now so far as the options themselves are concerned, if the contracts themselves were subjected to legislative, the requirement of legislative approval, let's put it this way, what is the position of your group with respect to this requirement that these contracts be subjected to legislative approval before they are effective?

MR. BOTTORFF: We haven't taken a specific position on that, Senator Cobey, and for the moment I really can't tell you. I think that this requires a good deal of consideration in our county as a whole as well as in our district.

SENATOR COBEY: Assuming that you are going to have an option deadline of the character that is in this contract, do you have any date to suggest aside from December 31, 1963, the one currently in the contract, that you could live with?

MR. BOTTORFF: It is uncertain to me, and I don't know how it is to others, but it seems to me like the question of how you determine beneficial use is involved in this question.

SENATOR COBEY: Well, beneficial use doesn't enter into this question of December 31, 1963.

SENATOR SHAW: I think it does.

MR. BOTTORFF: It provides that the Department has to be satisfied there is beneficial use involved, I believe.

SENATOR COBEY: I appreciate that, but if you can't live with December 31, 1963, what can you live with in the way of a deadline, if you know?

MR. BOTTORFF: Well, I personally would prefer to see

no deadline of a specific time such as in this.

SENATOR COBEY: You would rather see the deadlines removed, you would rather see the options as a whole removed, would you not?

MR. BOTTORFF: I think it was an entirely surprise proposal to us and we haven't quite gotten over the shock, you might say. However, I understand the Department's desire to be in a position to know what they are going to build and be able to plan accordingly. On the other hand, I see we have cost figures for November 28, which may be revised somewhat by this time, I don't know, but it shows that the incremental costs involved in some of the reaches of the program are very minor and I don't see how they would greatly affecting the planning of the construction program within that area of the construction.

SENATOR COBEY: Coming down to this question of allocation of costs as between the agricultural users on the one hand and M and I users on the other, as I understand it, your basic contention is that the provision of additional capacity in the aqueduct to take care of agricultural water users makes this a cheaper delivery system for Southern California than it would be if it were solely an M and I aqueduct?

MR. BOTTORFF: Well, from the information we have had from the Department, if my understanding is correct, that is true.

SENATOR COBEY: And it is on that basis that you are asking for the reallocation of cost?



MR. BOTTORFF: That is only partially the basis. That shows the room within which the thing can be considered without having an effect on the State. It is an approval of a project anyway in that case. The other considerations are whether or not there has been a real reaching of equitable values for unfirm water and I don't think we have gone far enough into that to determine it. It is an important thing in this whole proceedings.

SENATOR COBEY: You don't think any determination has been made as to what would be a fair and equitable allocation of costs as between these two types of water demands, is that right?

MR. BOTTORFF: The Department undoubtedly has done some figuring on this. They had a conclusion in July on the subject to which we didn't necessarily agree, but at least it was a conclusion and it was defended you might say in a way before the Porter Committee as compared to the proposal that Metropolitan was offering at that time, and I think there are still other factors that have not been taken into consideration. That is my honest opinion and I think they are quite important.

SENATOR COBEY: As I understand, it is still your position that so far as your district is concerned, that if they were asked to pay their fair share of the allocated costs for this water, they could do that in full?

MR. BOTTORFF: Well, that word "fair" gets pretty much--say the point where we would like to take part in it. I can say that.

SENATOR COBEY: Well, the reason why, Mr. Bottorff,

I emphasize the word "fair" in the question is you object to the words "subsidy" and as I understand it you say that your conclusion is that if your district pays its fair share, then there is no subsidy?

MR. BOTTORFF: That is correct, I believe so.

CHAIRMAN TEALE: How do you spell "fair"?

SENATOR SHAW: Well, does the Central Valley Project serve your area?

MR. BOTTORFF: Not the district I am in. Under the prevailing conditions the Central Valley Project is sold out of water. Now, there could be an addition to that district that conceivably might make water available from the eastern side of our district where we are now at least as far as the State program is concerned, we are looking toward the west side, for it to come across from the west side of the valley to the district.

SENATOR SHAW: Did I understand you to suggest there might possibly be a re-negotiation of this contract say in 1966 because without you as customers the cost to Metropolitan Water District and other contractors would be higher and thereby they might be impelled to re-negotiated this contract in spite of this option?

MR. BOTTORFF: I doubt that would be true because they have these formulas fixed in such a manner that it is not too consequential as to just what the figures work out for them, and they have both the tax base and demand indicated to their way of seeing it so that they would go ahead with the program.

SENATOR SHAW: Thank you.

CHAIRMAN TEALE: Senator Richards.

SENATOR RICHARDS: As I understand your testimony, Mr. Bottorff, you are laboring under the very human and natural reaction that you want water for your people as cheaply as you can get it and I think that is true of all of the districts that expect to use this water. May I belabor this point? Aside therefore from price, the question of the date, you feel that the date presents a deadline, and if I understand the rest of your testimony, you indicated that there is no over-all organization in your district at present capable of contracting on behalf of the area in question. Is that one of the problems, a lack of an organized and coordinated agency capable of contracting with the State this side of 1963?

MR. BOTTORFF: Well, actually that is a sidelight problem but in the history of the valley and in the history of this whole irrigation program of the State of California, districts organized properly under the various agency acts have always been able to do contracting jobs some way or do water development jobs. Now, we come into the picture where there is some discussions and effort being made at the present time to create what would be called a master agency. Both the Main report and the Department of Water Resources itself have indicated that that would be helpful in meeting some of the problems that arise through the particular type of program the State has in this Water Bond Act.

It just seems to me that that is not a panacea of the problem at all, that is, it would be one that would be helpful, but I

can't conceive where you have responsible districts that are farming, where you would not still have problems of costs and problems of dealing with the local agencies if there were such a master agency created.

SENATOR RICHARDS: This then is pertinent to my question. I'm trying to separate your motivation if I can without criticizing it. You have indicated a problem concerning price.

SENATOR COBEY: You are trying to perform a psycho-analysis.

SENATOR RICHARDS: That is right. You have indicated a desire to get water at as cheap a price as you can. You have answered Mr. Shaw's question there might be leverage because if you don't come in then my people will have to pay more. What I'm trying to understand is this problem of this date. If the problem is an inability to organize into a district big enough to contract economically and you feel it is beneficial you have such a contract, then I can understand the difficulty concerning the date. I would repeat Senator Cobey's question, when do you think you are going to be able to get together? Now, you tell me getting together is not a panacea and therefore you for one are not trying to get together into a larger district. Therefore, what are you seeking by way of a contracting entity that does not now exist?

MR. BOTTORFF: Well, let me inform you that I am active in connection with this master agency. I am a member of the Kern County Water Resources Committee and we are looking very carefully at this whole program and developing through attorneys



and engineers under the auspices of the Board of Supervisors. Actually just how quickly that can be done and to the degree it will be acceptable to the people is all a question that still remains to be determined.

SENATOR RICHARDS: But if you can get together you feel it would be a good thing?

MR. BOTTORFF: It might have a bearing on the early problems of the program, but as I say, it is an uncertain thing at the present moment and we must make out positions clear at this time before the Legislature because this is the time during which you have this problem before you.

SENATOR RICHARDS: Don't you feel that if getting together is an advantage that your opportunity of getting together is much greater if you have a deadline facing you than it would be if there is no such deadline?

MR. BOTTORFF: Not necessarily, Senator.

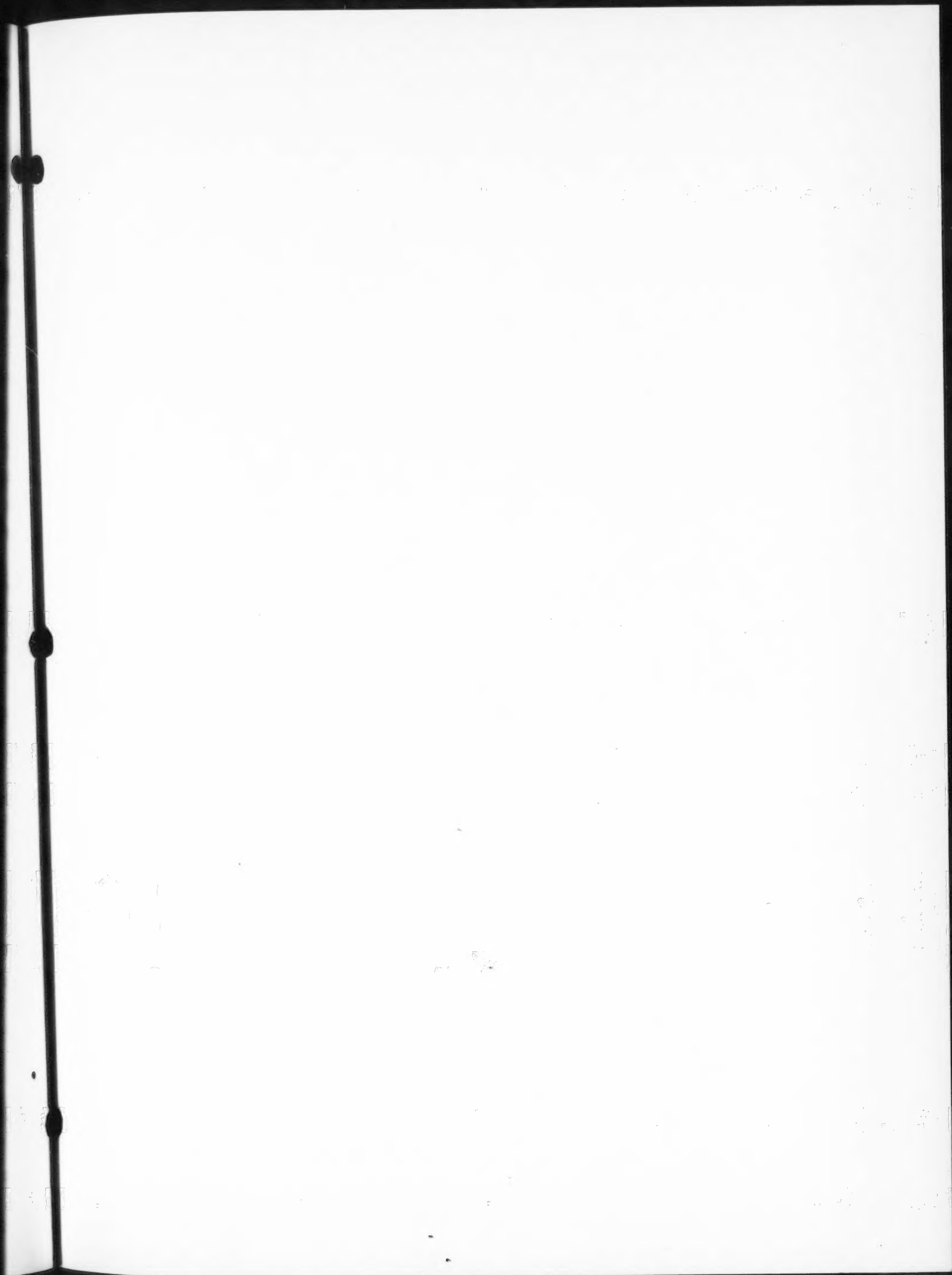
SENATOR RICHARDS: You think you would get together? If as you say the termini dates were removed entirely and the options were removed and the deadlines were removed, do you think you would still get together?

MR. BOTTORFF: Yes.

SENATOR RICHARDS: When?

MR. BOTTORFF: To the degree that it would be justified by the facts as we are developing them now.

SENATOR RICHARDS: And if you didn't, then, do you feel that you would yet be in a position to contract individually



State quite a good deal on this subject but almost all the emphasis on contracting from mid-July on was with Metropolitan Water District and very little outside.

SENATOR RICHARDS: In other words, there is nothing standing in the way of your negotiating a contract now?

MR. BOTTORFF: That is right.

SENATOR RICHARDS: Or between now and the deadline discussed?

MR. BOTTORFF: That is right. However, the contracts as they now exist do fix certain things by their terms. It is quite inflexible as to what might be accomplished.

SENATOR RICHARDS: I'm confused as to how much you think is fixed. To take an example, on page 4 where you discuss the three, perhaps four classes of export water, and you mention as the fourth class that water use specifically protected by acknowledgment in the contract of the county of origin and watershed protection acts. There is nothing by virtue of that contract recognition of these acts which tends to a status quo situation as far as you understand it, is there?

MR. BOTTORFF: Insofar as availability of water is concerned, it is obvious to me that under this contract those areas that established their rights under the county of origin and watershed protection acts will take no shortages. They will get the supply that they develop their right for and as far as the Delta supply is concerned, they would not be affected.

SENATOR RICHARDS: Well then, you do not wish to

imply that it is your desire to change that?

MR. BOTTORFF: No, all I'm pointing out is that this agricultural shortage problem is related to this one class of water and that there are really and practically three other classes involved.

SENATOR RICHARDS: And then I thought the other was the last, you have no desire to change any of these factors as far as the classes of water are concerned, do you?

MR. BOTTORFF: Well, as I see the picture of the utilization of water of the State, it requires conjunctive use of ground water and it is in that detail that Kern County is probably well situated because it has a ground water supply, it has a ground water basin if it can preserve it. It is possible you can over-use in some years and make up the deficiency, but it would be at the cost of the local area and it would have to equalize the uniformity of the water supply. So I can't say there is anything wrong with that factor, that we do take shortages at some time, but we do take it at a cost if we have to make it up.

CHAIRMAN TEALE: Senator Regan.

MR. BOTTORFF: Pardon me, Senator, I just wondered if Mr. Barling, who is chairman of the Semitropic Water Storage District and Mr. Edmonston have come in by this time. Maybe I'm not doing the job 100 percent here. Would you mind if they came up and I'll introduce them. I'm not going to have to do all this alone perhaps with them. I think perhaps you know Mr. R. M. Edmonston. Mr. Barling is president of the Semitropic Board.



Maybe they can help some of these additional technical questions.

SENATOR REGAN: Mr. Bottorff, I was late this morning. I was at another meeting. If I should infer something that was not actually said by you, I hope you will immediately correct me, but I would like to get a few things straight for the record since we are reviewing this situation today. Do I understand that you stated that the price at which agriculture in your area would get water is a price beyond what you feel agriculture could afford to pay in that area?

MR. BOTTORFF: Well, the indications of the costs given us so far are beyond what I consider, and I think the others here, too, feel is the proper capacity to pay. When I say that, I mean if you look at your costs and your profits right you would be in difficulty.

SENATOR REGAN: May I ask you in the contract that we are talking about today, are you priced out of the picture as of the present moment for the kind of agriculture that you now are engaged in?

MR. BOTTORFF: I would say our present operation would not afford these prices.

SENATOR REGAN: So you are priced out of the picture?

MR. BOTTORFF: That is right.

SENATOR REGAN: I'm receiving congratulations--I'm trying to find out why. Now, for the record, and I mean this is no reflection upon any individual in your entire area, but let's get the record straight as to what has happened to date. Mr. Bottorff, either you or your representatives of your area over

the past six or eight years have from time to time been members of the committees attempting to solve the problem of water maldistribution in the State of California, isn't that so?

MR. BOTTORFF: That is right.

SENATOR REGAN: And I believe you can recall that there were various committees seeking to consider the problem of a Constitutional amendment which was sought by the Metropolitan Water District and others in the south. That is so, is it not? It is true, is it not, that on many many occasions either I or other members of the committees have said, does agriculture have a place in the water program of California as it's being presented to us today, and yesterday in the other committees. Many many times I am sure you were present and other representatives of your committee and your area, isn't that so?

MR. BOTTORFF: That is right.

SENATOR REGAN: And many many times, isn't it a fact that somebody questioning said, what is the price at which you in your area are going to have to pay for water from this project. Now, at that time were your people interested in what you had to pay for the water?

MR. BOTTORFF: I'm sure, Senator, we were interested.

SENATOR REGAN: Why didn't you do something about it? That is the point. We were unable to get you--I don't mean you as an individual, but your area down there interested at all in the problem as we saw it. I think we begged many times, asked you before you voted on 1106 to find out what you are getting, and it

seemed to me that the representatives from the area didn't care as long as they could get 1106 over. Now you have it.

MR. BOTTORFF: Well, actually, Senator, I don't think we have changed our views on 1106.

SENATOR REGAN: No, but you have the contract that came out of it.

MR. BOTTORFF: The point is that there is a contract that has been developed.

SENATOR REGAN: I understand--I have read it and have been shocked.

MR. BOTTORFF: It is quite possible that if some of the things that I have been talking about here this morning were corrected in an equitable manner that it would bring us into the market.

SENATOR REGAN: Let me make this further observation. I can recall on the Governor's committee, the Attorney General's committee, the various other committees of the Legislature when we considered the problem that you said you were amazed and shocked by, this matter of the continuing options, the options to take, and one of the major goals that the Metropolitan Water District was seeking in the past six years in all of these meetings was to be able to take the entire amount of water from the Delta and have it transported south to be distributed through its system, and every time we were able to block that one thing in there, but this was known to the people who are making the complaint here today and we begged you people to do something about it, but nobody seemed to be interested enough to do it because it was very evident at

the time that the Metropolitan wanted to contract for all of the water out of the Delta and one of the questions raised, and Dick Richards and I debated that across the table on many occasions, was the fact that if you do not have the rest of the area in the service area ready yet to contract eventually there will be just one customer for the water on the one customer's terms and that is as I read the Metropolitan contract, that is apparently what we have now and if we can't change it, and I doubt very much that we can on the legislative level, I'm just wondering how we can be of assistance. I don't intend to be critical about the position, but I'm wondering why all of this wasn't understood at that time and something done about it.

MR. BOTTORFF: Well, Senator, we read the Bond Act and we read how it incorporates the rules and regulations of the Central Valley Project administration and I think that we could actually go for the Bond Act at any time as it stands today. One of the clauses in that Bond Act still does give the Legislature some rights and I admit that they are sometimes difficult to exercise.

SENATOR REGAN: It is quite a shallow one.

MR. BOTTORFF: But we saw that and figured there was protection. You asked the question why and how do you feel this way about anything. We would say that if a program came before you that was completely fair and equitable in a form of a contract, that you wouldn't be concerned or worried about the problem that you are speaking about.

SENATOR REGAN: Allen, don't you remember in meetings when the representatives of the Metropolitan would say, we would



discuss the very same thing we are talking about now and they would say, "We have to have it tied down because we don't trust the action of subsequent legislators because we can't tell who will be in the Legislature and how the legislators will vote." Well, of course, we felt the same thing then, unless we had everything ironed out, unless all these things that you are talking about now were in some way determined basically as the law of the State, that we were going to be in trouble and we would be in the trouble we find ourselves in now. I'm now concerned because there is no place for agriculture under 1106 and the contract that is signed.

MR. BOTTORFF: I would think that there is under 1106 and we are still hopeful that this matter can be worked out.

SENATOR REGAN: Not out of the Delta because of the Metropolitan contract.

CHAIRMAN TEALE: Gentlemen, I'm going to give Mr. Bottorff some relief and call the next witness because I think we can continue our questioning with the next witness.

SENATOR MILLER: Mr. Chairman, may I ask one more question--may I ask your indulgence.

CHAIRMAN TEALE: One question.

SENATOR MILLER: I may have to ask the same question twice, but I'll only be asking the same question.

CHAIRMAN TEALE: One question.

SENATOR MILLER: Thank you, Mr. Chairman. Mr. Bottorff, I seem to get the impression that you were talking about the contract with the Metropolitan and the Burns-Porter Bond Act as two separate and distinct things. The thought occurs to me that

the Metropolitan contract was in the process of negotiation during at least to my knowledge most of September, all of October, and into November, and the Metropolitan contract was in fact signed and the prospective provisions were generally known to all, at least I knew about them and we were running a little half-baked campaign in opposition. Three days before the election, the contract was signed, and you knew that this became a part of the bond issue, did you not, with the only escape clause being a change by both Houses of the Legislature?

MR. BOTTORFF: Yes.

SENATOR MILLER: All right, the question then is this, why didn't you raise your voice in protest against the bond issue? I'm assuming you did not.

MR. BOTTORFF: If you are speaking to me personally on this subject--

SENATOR MILLER: I'm speaking to you and your organization.

MR. BOTTORFF: I'm convinced that the passage of the Bond Act is a great thing for the State of California and we must rely upon the Legislature if necessary, but certainly upon the negotiations and every other instrument to correct anything that is not just right at the present time.

SENATOR REGAN: Will you tell us how you are going to do it?

SENATOR MILLER: I would like to talk to you privately and get some of the ideas as to how we do this.

CHAIRMAN TEALE: Our next witness is Mr. Onie Sanders, president of the Wheeler Ridge-Maricopa Water Storage District of Kern County. Mr. Sanders.

MR. BOTTORFF: I'll leave Mr. Edmonston here because he is engineer for the other districts also.

CHAIRMAN TEALE: Fine, thank you.

MR. BOTTORFF: Thank you.

CHAIRMAN TEALE: Sit down, Mr. Sanders, and you may proceed.

MR. SANDERS: Mr. Chairman and Members of the Committee, my name is Onie Sanders. I am president of the Wheeler Ridge-Maricopa Water Storage District of Kern County. On behalf of this District, I wish to express my appreciation to your Committee for the opportunity of appearing to present our views on the water service contract entered into by the State of California Department of Water Resources and The Metropolitan Water District of Southern California on November 4, 1960.

The views of our District as expressed in this statement are for the most part directed to the State Department of Water Resources and The Metropolitan Water District of Southern California as parties to the contract. We do, however, offer certain comments and suggestions for the consideration of this Committee and the California State Legislature as a whole.

May I state, in the beginning, that my remarks and suggestions on the contract are intended to be constructive and for the purpose of providing a basis for an equitable solution to a very

serious problem facing our District, which problem is shared by many of the potential service areas of the State Aqueduct System.

Our analysis of the executed contract of November 4, 1960, shows without question that it would be financially impossible for our District to participate in a similar contractual arrangement with the State of California.

This conclusion is based on an analysis of a quantitative interpretation of an earlier contract draft together with a qualitative evaluation of the November 4th contract. We have not received a quantitative interpretation of the executed contract, and are advised by State Department of Water Resources officials that such interpretations have been completed only recently. In view of this, we are appreciative of the fact that during the unilateral negotiations on the contract by the State and the Metropolitan Water District, the full implications of certain of the contract provisions which effect the exclusion of agricultural interests in the San Joaquin Valley and others from participation in the State Water Program must not have been known to either party.

We offer herein suggestions for the modification of portions of the contract, for the consideration of the State, the Metropolitan Water District, and this Committee, that in our belief are consistent with the Governor's principle that beneficiaries of the project should share its cost in proportion to benefits received. We feel that the contract as now written is inconsistent with this principle. The adoption of these modifications would permit a broader participation in the project than is now possible, which



participation would inure to the benefit of the entire State

#### The Wheeler Ridge-Maricopa Water Storage District

The Wheeler Ridge-Maricopa Water Storage District was formed in August 1959 under the auspices of the State Department of Water Resources, as required by law. This District was formed for the purpose of securing a supply of much needed supplemental water from the California Water Resources Development System. The District comprises about 127,000 acres of highly productive agricultural land. There are no urban areas in the District. At the present time, about 45,000 acres are under irrigation from a ground water supply which is being rapidly depleted. Pumping lifts now exceed 600 feet in portions of the District, and are increasing each year. Ground water overdraft was estimated by the State to be about 125,000 acre-feet in 1956. The State, in its studies has allocated a maximum annual entitlement of 193,000 acre-feet to the District to eliminate the current overdraft and permit a moderate increase in irrigated land. It is apparent that our District has a great stake in the project, which it appears is our only hope for supplemental water.

#### Contract Analysis

The contract of November 4, 1960, fails in most respects to recognize problems of underdeveloped or low assessed valuation areas. It is designed solely to provide for incremental water needs of metropolitan areas having a large existing tax base. In this, it is in violation of the fundamental concept of water development in California--to provide for the water needs occasioned

occasioned by the preservation, growth, and development of all parts of the State. The basic reason for the State or federal government's participation in water resources development is to assist those areas which although having the ability to repay properly allocable costs of such development through purchase of water, do not have the financial capacity to initiate the development by themselves. This principle, in fact, was adopted by original members of the Metropolitan Water District of Southern California, primarily the City of Los Angeles, and has been the primary reason for the tremendous growth of the entire coastal plain area south of the Tehachapi mountains.

Specifically, we find that our inability to participate in the State program as required by the contract of November 4th stems from the following:

- (1) The severe early repayment requirements; and
- (2) Inequitable cost allocations which make costs of water even under full utilization of project supply, in excess of the payment capacity of our lands.

Although the foregoing are of primary concern to this District, there are certain other features of the contract that we find improper and extremely burdensome to our District. These include the arbitrary cutoff date of December 31, 1963 for executing a contract, the deficiency provisions of Article 18; and the surcharge provision of Article 30.

With respect to repayment of principal and interest in the manner set forth in the contract, we find little flexibility for

an area of low assessed valuation, which would require at least a 10-year development period after initial water deliveries to procure sufficient revenue from water sales to meet repayment obligations. While we are appreciative of the fact that Article 45 intended to meet this need, we wish to advise that its effects are minimal in this regard. Article 45 is permissive only and is contradictory to other contract provisions. In agricultural areas the only significant source of revenue is from water sales. Therefore, method of repayment must be based on this fact in such areas. This has been a long-recognized principle throughout the Western United States. This principle was also recognized by the State Department of Water Resources in both its 1955 report on the Feather River and Delta Diversion Projects, and in its 1959 report, Bulletin No. 78, but was not recognized in the contract.

As nearly as can be determined from our own studies, which are still in progress, unit costs of water far exceed the payment capacity of our lands. We believe that this could be corrected through equitable cost allocations along with an administrative or legislative action which would implement flexibility provisions regarding early repayment by areas of low assessed valuation. The method of cost allocation employed in the contract is an average of the so-called "capacities required" and "volume delivered" methods. It is a negotiated compromise between the State and the Metropolitan Water District. This method does not properly reflect the nonfirm water supply allocated to irrigated agriculture as set forth in Article 18, nor does it properly compensate for the added

costs which agriculture would incur by virtue of having this non-firm supply. This Article 18 provides that agriculture shall absorb deficiencies up to 50% of its maximum annual entitlements in any year and up to 100% of one year's maximum annual entitlement in any seven-year period. Beyond this, established public policy as well as common sense dictates that people will receive necessary water ahead of plants. We are in full agreement with this principle. We also recognize the greater efficiency of project facilities resulting from operation on a deficiency basis. However, under such an operation it would be necessary for our District to perpetually maintain supplemental ground water pumping installations to provide continuity of water service to our lands. Thus, agriculture would have a second class water supply but would be required to pay the first class price in addition to maintaining these pumps and wells to assure firm water.

This inequity could be eliminated by allocating the cost of transportation facilities to convey the second class supply on an incremental basis rather than by the method employed in the contract. Incremental cost allocations to agriculture would not increase the costs to other areas over what their costs will be with agricultural districts in Kern County precluded from participation. It is our understanding that Southern California's allocated costs of transportation facilities are estimated to be \$804 million with Kern County excluded, as it will be under the present contract. Under incremental cost allocations for unfirm water, this total allocated cost will not increase.



In establishing the arbitrary cutoff date of December 31, 1963, for executing a contract, we feel that the State and the Metropolitan Water District failed to recognize certain technical difficulties which will be experienced by some of the potential contractors. These include areas which are not now organized, as well as certain of the organized areas which, by law, are required to pursue a lengthy time-consuming process in entering into a water service contract. For example, the legal process required of a water storage district such as ours, together with negotiations with the State on a contract, which as yet have not commenced and will not commence according to the State until after the close of this legislative session, may require additional time beyond December 31, 1963. It appears to our District that if an agency is proceeding diligently toward contract execution and negotiating in good faith, failure to actually execute a contract by December 31, 1963, should not exclude that agency from participation in the project.

This District wishes to go on record in opposition to the provisions of Article 30 "providing for a surcharge to excess lands." We are in agreement with the principle that there should be no unjust enrichment created by the project. However, when any entity or person is paying his fair share of the cost, we fail to see by the application of any accepted principles of logic or common sense that any unjust enrichment would occur.

#### Contract Modifications

In order to broaden participation in the project by agricultural areas and other areas of present low assessed valuation, which participation is not possible with the contract of November

4, we respectfully request that the State and the Metropolitan Water District modify the contract as suggested herein. Without such modifications, the economy of many portions of the State will not develop and, in fact, will retrogress. Further, the cost of participation in the project by those who are financially able will be greater by virtue of the fact that the size of project transportation facilities will be smaller.

We specifically request the State and the Metropolitan Water District to modify the following articles of the contract in the manner indicated:

1. Article 24

Modification of this article to allocate on an incremental basis capital costs of those portions of the transportation facilities used to convey the "nonfirm" water supply to be used by irrigated agriculture.

2. Article 45

Modification of this article to unequivocally provide for a 10-year development period after the date of initial water delivery for underdeveloped areas and areas of low assessed valuation.

3. Article 8

Inclusion of a provision that if an area is proceeding diligently in its negotiation of a contract, such agency's proposed maximum annual entitlement would not be subject to the option of others if a contract had not been entered into by December 31, 1963.

4. Article 30

Elimination in toto of this article.

This District wishes to emphasize that it is in full support of the State program and wishes to see water from the project delivered to its lands as rapidly as possible. We believe our suggestions and recommendations presented herein are fair and equitable, and in consistency with the principles of sound water resources development. We wish to advise you that locally we are doing everything that is possible to make feasible our District's participation in the project. This includes the consideration of a master water agency in Kern County.

In closing, may I state that our area has continuously supported the Feather River and Delta Diversion Projects since their inception in 1951. We have faith that an equitable contractual arrangement will be developed whereby we can participate in this project.

CHAIRMAN TEALE: Thank you, Mr. Sanders. I hope that your faith is justified. Senator Cobey.

SENATOR COBEY: Mr. Sanders, let me first congratulate you in being forthright and specific. As I understand your last statement, your last sentence on the first page of your statement, your district could not participate in the program if the contract is left unchanged?

MR. SANDERS: You mean because we couldn't have contracted by that time?

SENATOR COBEY: Yes.

MR. SANDERS: We couldn't, no.

SENATOR COBEY: Now, you indicate on page 3 that there

will be a slight increase or a moderate increase in irrigated land and as I see it you have 46,00 under irrigation now of 127,000 acres?

MR. SANDERS: That is right, sir.

SENATOR COBEY: How much more land are you talking about in this moderate increase?

MR. SANDERS: Well, with that amount of water it looks like maybe they would anticipate another 15,000 or 20,000 acres might be developed over a period of a good number of years.

SENATOR COBEY: In other words, you would get up around 60,000 acres, in that area?

MR. SANDERS: Yes, sir.

SENATOR COBEY: And the rest of that 127,000 is dry farmed?

MR. SANDERS: Yes. However, it is all very fine land. The water is the big question mark.

SENATOR COBEY: Now, if the State had made this modification in this contract that you refer to and had taken the volume delivered method alone, would that bring the cost of your water down to your ability to pay?

MR. SANDERS: I don't know that we had ever decided that we were in the ball park under the other system. However, with the changes and some repayment flexibility why we had hoped that there was a possibility that they would be. I believe that is about as close as I could tell you at this time.

SENATOR COBEY: You know you are out of the ball park



now, you are not sure you would have been in there then but at least you would have been closer to it?

MR. SANDERS: That is right.

SENATOR COBEY: Now, calling your attention to your statement on page 7, this language, "It is our understanding that Southern California's allocated cost of transportation facilities are estimated to be 804 million dollars with Kern County excluded, as it will be under the present contract. Under incremental cost allocations for unfirm water, this total allocated cost will not increase."

Now, do I understand from those two sentences that you are saying that if Kern County is unable to participate in this program, that the allocated cost of the aqueduct, in other words, transportation facilities to Southern California, will be 804 million dollars is that right?

MR. SANDERS: That is right, sir. My understanding is that they are not committed to 750 million dollars, they are committed to 804 million dollars if there aren't enough other people coming in to enlarge the size and cause a reduction in cost.

SENATOR COBEY: Now, what do you mean by that second sentence, "Under incremental cost allocations for unfirm water, this total allocated cost will not increase"? You mean that this 804 million dollars will not increase?

MR. SANDERS: That is right. The 804 million dollars that they are committed to right now under contract would not be increased.

SENATOR COBEY: I understood Mr. Bottorff to say that--

MR. SANDERS: Pardon me, I should have let Bob add something there.

SENATOR COBEY: Go ahead.

MR. EDMONSTON: Also you will note in the statement the suggestion is for the unfirm water. Actually, the State has allocated 1 million 400 thousand acre feet to Kern County as the maximum annual entitlement. Now, if by this method of cost allocation you are able to bring these lands in, presumably Kern County would also participate in the firm water supply which would tend to reduce this 804 million dollars down to something between there and the 750 million which I believe Mr. Skinner indicated was their estimated allocation under the present contract.

SENATOR COBEY: What I am trying to get at, Mr. Edmonston, is this, Mr. Bottorff in his testimony indicated that Southern California would find its water expensive if Kern County were completely excluded, if these facilities were built only to the size to take care of Southern California. Is that a correct statement of fact?

MR. EDMONSTON: Yes. Last week when Mr. Skinner was here, I don't want to misquote him, he advanced the figure I believe of 750 million dollars as the allocated cost to the Metropolitan Water District if they went ahead and everybody contracted in the manner that the State has estimated they would. Now, this figure of 805 million dollars excludes the agricultural interests in Kern County. So if Kern County drops out the cost to the

Metropolitan Water District is thereby increased on that basis about 54 million dollars.

SENATOR COBEY: Would there be any other increase in cost aside from the transportation facilities themselves?

MR. EDMONSTON: I believe the Delta water rate would have to be adjusted.

SENATOR COBEY: What I was getting at, Mr. Edmonston, if you are going to have a smaller market to spread your cost over, why you are going to have to have a higher unit of cost.

MR. EDMONSTON: Yes.

SENATOR COBEY: And as I understand it, it is the position of the Wheeler Ridge-Maricopa Water Storage District that if this Metropolitan Water District contract remains in effect Kern County won't be able to participate in the State Water Program?

MR. EDMONSTON: That is our belief, yes.

SENATOR COBEY: Thank you.

CHAIRMAN TEALE: Senator Regan.

SENATOR REGAN: Mr. Sanders or Mr. Edmonston, I was interested in the mechanics of the situation from an economic and engineering standpoint. Let us assume Kern County cannot participate in the project because of these higher costs, do I understand that under those circumstances the size of the conduit system south would be reduced so that the cost of delivery of water would be reduced into Southern California, is that so?

MR. EDMONSTON: That is our understanding, unless the Metropolitan Water District were to contract for 1 million 400 thousand acre feet that would otherwise go to Kern County. Mr.

Skinner last week indicated that they were not thinking in those terms, possibly half a million, so it would be smaller.

SENATOR REGAN: We presume we are building a conduit system for not only the Metropolitan but for other areas of the State as well. Now, if we reduced the size and if under a California Water Plan it becomes necessary to build a structure, say the North Eel or something of that size, to put additional water into the Delta to be transported to customers in the future, how much of an increased cost would there be then to build a parallel system for conducting the water south from an engineering standpoint? Shouldn't we build notwithstanding the number of customers we have at the moment, shouldn't we build the main structure to a capacity that represents the thinking of 20, 30 years from now?

MR. EDMONSTON: Well, I think from what I term engineering economics you can demonstrate that probably we should maybe even build the canal system to the demands estimated in the year 2,000 or 2,010, but what always controls in these things, of course, is your financial ability in that you apply the rule of reasonableness and judgment and build it consistent with the amount of money you have and long enough to give or meet the demand for a reasonable period in the future. I don't think we are quareeling with the timetable or the design capacity as far as that goes.

SENATOR REGAN: Let's assume, because I don't quite understand the full mechanical picture, let us assume that you do not participate so Kern County cannot as of now take out the amount of water allocated to it. Then, the size of the main canal is



reduced, is that so?

MR. EDMONSTON: Yes, according to the statements. I'm really going on what the administration has said, that unless you contract they won't build capacity in for you, so therefore it would be smaller.

SENATOR REGAN: Then, if the canal south is reduced in size and you then find right after 1963 that you have a use for the water and would like to have the water allocated to you, how then do we get the water to you? And at what price then if you have to build a parallel system?

MR. EDMONSTON: It would cost twice as much to put in a parallel canal, of course.

SENATOR REGAN: The answer would be yes, if you build parallel canals, wouldn't it?

MR. EDMONSTON: That is right.

CHAIRMAN TEALE: Senator Richards.

SENATOR RICHARDS: If I understand your testimony on behalf of the part of Kern County that you represent, although you are not satisfied with the contract as it now exists between the State and Metropolitan Water District, it is your hope that a re-negotiation takes place between the contracting parties and it is not your request that it take place by virtue of legislative action, is that right?

MR. SANDERS: That is right.

SENATOR RICHARDS: Now, because you gave us a very precise statement and I join with Senator Cobey in his remarks concerning it, I am confused by one part of it at the beginning. I may be mis-reading. You reached a conclusion at the bottom of page

1 to which Senator Cobey referred. On the top of page 2 you say, "This conclusion is based on an analysis of a quantitative interpretation . . ." In the next sentence you say, "We have not received a quantitative interpretation of the executed contract." I'm confused as to where your analysis came from.

MR. EDMONSTON: We were provided in July or August as I recall with a tentative quantitative interpretation that the State worked out of either the July or August draft of the contract. This is the only quantitative information we have that would give us any indication of our repayment obligations over time. We used that together with a qualitative, our own qualitative interpretation of the November 4 contract for which we have not received the precise analysis of repayment obligation over time. That is what that means.

SENATOR RICHARDS: I take it that the analysis once received would perhaps change or at least shade the conclusion reached at the bottom of page 1?

MR. EDMONSTON: Very frankly insofar as the agricultural areas of Kern County are concerned, based primarily on the method of cost allocation employed, if I might use the term, the situation is worse as we interpret the November 4 contract than the earlier drafts for which we had quantitative analyses.

SENATOR RICHARDS: Well then, again we get down to a question of price for water and on this point I assume we are in agreement, that it is understood that the contracts we have and however obtained must be contracts that substantially pay out the

cost of the project in toto, isn't that right?

MR. EDMONSTON: That is correct.

SENATOR RICHARDS: And basically and equitably those who receive the water should pay for what they get, for the benefit they receive, or the cost of the delivery of the water to them, whichever way you want to figure?

MR. EDMONSTON: Yes.

SENATOR RICHARDS: Therefore, if we are arguing about price, we are arguing about, although we may want to avoid the words "subsidization"?

SENATOR COBEY: I don't.

SENATOR RICHARDS: I'm not saying Senator Cobey does, but one of our witnesses did. We are eventually going to have to approach the question of what you call here incremental costs, I believe, cost predicated upon an incremental basis which means to what degree will other users pay for a part of the cost of the agricultural user, is that right?

MR. SANDERS: Well, that is right, but I think--

MR. EDMONSTON: No, I don't think it is right.

MR. SANDERS: What I would like to say in that regard is that before you can start using that nasty word "subsidy" a proper price has to be arrived at. Would you agree with that?

SENATOR RICHARDS: Yes, and then let me put another question on that very point. You say that the inequity which you refer to you believe accrues to your area by virtue of application of the cost allocation of the contract now in existence. If this inequity can be eliminated by allocating the cost of transportation facilities to convey the second class supply on there-

incremental rather than on a method provided in the contract, will you translate that into dollars and cents per acre foot?

MR. SANDERS: I could translate it into dollars and cents not in my own district, because when we worked it out on the blackboard study with the Department and asked them to supply us with certain figures, this figure of \$13.25 per acre foot in the Semitropic Water District was reduced by the incremental method to around \$8.80

SENATOR RICHARDS: Then there is about a 5-dollar differential in your geographical area that is somewhere in Kern County?

MR. SANDERS: Right.

SENATOR RICHARDS: And that \$5. should in your opinion be picked by whom?

MR. SANDERS: I think it revolves back to the point, are we talking about two commodities? We have one commodity that has an absolute firm supply, right? Now then, in our agricultural supply of water we don't have a firm supply, do we? Now, should we take a 50 percent cut in any one year--

SENATOR RICHARDS: I submit, and because you are articulate enough to follow it, I'll not hesitate to interrupt, you are arguing the merit of the difference, not answering the question as to who should pick it up.

MR. EDMONSTON: Senator, getting back to your earlier question, you are asking who will be picking up the costs. The costs will be picked up by agricultural interests in Kern County.



We attempted to demonstrate unless something like this is done, the agricultural interests of Kern County will not be in the picture. We will postulate that condition and then we will make the canal a little bit bigger. The cost to Metropolitan isn't affected at all. Kern County picks up the increased cost.

SENATOR RICHARDS: The theory of the cost is ultimately being paid in full by the user is the theory to which you then subscribe.

MR. EDMONSTON: I believe that under the statute we wouldn't have any other choice. Whether we desire to subscribe or not, I think the law is there on the books in the Code in the Central Valley Project Act.

SENATOR RICHARDS: Incidentally so we can understand the policy here, I think I should say I am in favor of your coming in and being in the contract. I think it would be a misconception to assume those south of Tehachapi don't want others to contract. This is not true, and I think you are right that if you do come in and do contract, the cost to all of us is cheaper, ours included. Thank you.

CHAIRMAN TEALE: Hearing no other demands for questions, I wish to thank Mr. Sanders and call on Mr. James Sorenson, and we have 30 minutes to wind up three more witnesses. Mr. Sorensen, I see, is secretary of the Friant Water Users Association, Consulting Engineer.

MR. SORENSEN: Thank you, Mr. Chairman, that is correct, and I reside in Visalia.

CHAIRMAN TEALE: Haven't we had the pleasure of hearing you before?

MR. SORENSEN: I believe so. Let's say I have appeared before the Committee before.

CHAIRMAN TEALE: On our part.

MR. SORENSEN: Thank you. With your approval, I would like to read this statement, and then I am accompanied by Mr. Robert Moock of Visalia, who I believe would like to amplify a couple of the points.

CHAIRMAN TEALE: All right.

SENATOR COBEY: Mr. Moock is an attorney.

MR. SORENSEN: Senator Cobey indicates Mr. Moock is an attorney.

These comments on the contract between the State of California, Department of Water Resources and the Metropolitan Water District of Southern California are concerned chiefly with the provisions of Article 8. Option to increase maximum annual entitlement.

Preliminarily it may be said that the members of the Friant Water Users Association believe that the continued healthy well being of California requires the continued healthy well being of agriculture. With increased population pressure mounting daily in California, the development of new land for agricultural purposes in the San Joaquin Valley continues at an accelerated rate. Some of this recent and current development is taking place in areas of inadequate water supplies and it is not only concern for these new lands but concern for the previously developed lands which prompt

our belief that it is imperative that water supplies for agriculture be developed along with water supplies for other needs in California.

Article 8 of the contract specifies that in the event that the maximum supplies available from the project are not under contract by December 31, 1963, that those units which may have already executed water supply contracts will have the option to contract for additional supplies up to the total project yield. There is about two years and four months of time between the effective date of this contract and the deadline date for other units to have executed contracts.

If the water sales rate in the San Joaquin Valley were such that agricultural users could be relatively sure that they could afford to pay such prices, there might be little difficulty in meeting the December 31, 1963, deadline. However, with water rates as are now estimated, most agricultural areas have serious problems to overcome prior to obligating themselves to purchase project water.

It is of interest to note that on the Friant-Kern Canal of the Central Valley Project where construction was commenced in 1945 that many of the contracts for water service were not executed until 1950 or later. The construction of Friant Dam, required to make water available for delivery into the Friant-Kern Canal, was commenced in 1939 and at this early stage the formation of Districts was commenced in the Friant-Kern Canal service area. Thus it was at least 10 years after commencement of construction before

some of the contracts were executed and it was 5 years after commencement of construction of the transportation facilities before contracts were completed. While it is true that one of the delaying factors had to do with the cost of water, it is now obvious that the prices of \$3.50 and \$1.50 for Class I and Class II water supplies respectively were bargain rates in the light of present estimates.

At the present time substantial areas of Kern County are contemplating the formation of a county-wide district to contract for water supplies which would be made available to portions of the county's agricultural lands. One of the chief problems encountered is the justification of taxing lands already heavily taxed for water supplies and distribution systems in order that lands not able to pay the project rates may be subsidized. Specifically the opposition of the Southern San Joaquin Municipal Utility District and the Kern portion of the Delano-Earlimart Irrigation District as well as that of some of the foothill areas is called to your attention. In the case of the two districts, their opposition stems from the fact that they each have long-term repayment contracts extending to about the year 2000 with probable extensions for repayment of their distribution system expenses as well as the continuing water supply costs.

In addition, delays will be encountered in arranging exchanges of both water and water rights, determination of water supply requirements, and the many problems connected with large scale water deliveries. Reference is made to Appendix D of



Bulletin 78 in which an exchange of 160,000 acre feet of project water is contemplated for an equal amount of Friant-Kern Canal water. At the present time, there has been no start on arranging for such exchange except possibly for the mention as noted.

In connection with the allocation of project water supplies, it should be noted that the request for assignment of the State Feather River filings contained an area allocation of project water up until they were, in effect, removed on January 6, 1960, at the meeting of the California Water Commission. Previous to that date, San Joaquin Valley interests had no reason to believe that there would be any change in the project supplies and their allocation which included 1.4 million acre feet for the San Joaquin Valley.

Considering the contract between the Department of Water Resources and the Metropolitan Water District along with the removal in effect of the area allocations of Feather River supplies, it is now within the power of the Department of Water Resources to control the disposal of the water supplies with little or no control or power in the hands of any legislative agency or other group.

The matter of reduction of agricultural deliveries in years of short supply is one of great concern to agricultural interests. For the water supplies estimated to be available from this project, there apparently is to be a deficiency in about 10% of the years or one in 10. While it is true that in the Central Valley Project agricultural uses receive reduced supplies before reductions are made for domestic uses it should be noted that the domestic users pay several times as much for their water supplies as do agricultural users. For example in the Friant Unit for the Central Valley

Project irrigation users pay \$3.50 per acre foot for Class I water, \$1.50 per acre foot for Class II water and domestic users pay \$10.00 per acre foot. Apparently the forced reductions are accompanied by a differential in rates for the different type of use.

With further regard to this matter, it might be noted that much of the demand for water supplies in Southern California apparently comes from the defense industries and it is quite probable that all of the taxpayers are in effect subsidizing their operations and creating this increased demand for water. Under such conditions, it is no wonder that Southern California areas are able to pay much higher costs for water than are areas in the San Joaquin Valley.

It is our belief that the time limits expressed in the contract do not provide sufficient time for all potential San Joaquin Valley water users to execute contracts of this nature and we believe that an equitable solution calls for a longer negotiating period.

CHAIRMAN TEALE: Thank you very much, Mr. Sorensen. Do you wish to comment further?

MR. MOOCK: Mr. Chairman, as Mr. Sorensen stated, my name is Robert Moock and I am an attorney from Visalia, California, and I am here representing the County of Tulare, and the County of Tulare wishes to join in the statement made by Mr. Sorensen and I would ask your permission to amplify it with two or three questions. Now, Mr. Sorensen, on page 3 of this statement you refer to certain allocations of project water supplies and

can you tell us how and why these allocations were put in the applications prior to the time the applications were assigned to the Department of Water Resources?

MR. SORENSEN: Well, it is my recollection that at the time that the contract between the Bureau of Reclamation and the State of California was being negotiated on the joint operations in the Delta and the agreement for operations, that as an outgrowth of that negotiation, the belief that these allocations should be included in the application arose and shortly after that time they were included in the applications prior to the time that they were acted on fully by the Water Commission.

MR. MOOCK: Mr. Sorensen, as long as those allocations including the 1 million 400 thousand acre feet of water for the San Joaquin Valley were in the applications, the San Joaquin Valley had some protection, did it not, in addition to whatever other protection they might have under the law?

MR. SORENSEN: Yes, this was in the nature of a specific allocation to an area of the San Joaquin Valley. There was an allocation to Southern California of 1 million 800 thousand and there were other allocations for North Bay, South Bay, Feather River service area, and the Central Coast. I believe that was the extent of those, but those were firm allocations.

MR. MOOCK: And it is a fact, is it not, that is only one of the State applications which had any sort of priority prior to the time that they were amended as to place of use in the floor of the Sacramento and San Joaquin Valleys?

MR. SORENSEN: Yes, this being the original State filing which was made on Feather River supply.

SENATOR COBEY: What was its number?

MR. MOOCK: 5628 or something of that nature.

CHAIRMAN TEALE: Let me interrupt just a moment. It was not an allocation, but wasn't it rather in the application made for allocation of these waters to this specific area? It was prior to the release of priority, prior to the decision of the Water Commission, when you simply had an application for water?

MR. SORENSEN: But these area allocations were included as amendments to those applications before they were heard by the Water Commission. There was a hearing on this release from priority but they were in there at that time.

CHAIRMAN TEALE: As an application for a specific amount of water?

MR. SORENSEN: That is correct.

CHAIRMAN TEALE: All right.

MR. SORENSEN: That was at the time of the election on the bond.

CHAIRMAN TEALE: Yes.

MR. MOOCK: And then, Mr. Sorensen, when it was agreed that these allocations were to be put into these applications, the San Joaquin Valley, or at least the portion represented by you and by me, withdrew our opposition to the amendment of the applications and the consequent expansion of the places of use under these applications including this one which had the priority?



MR. SORENSEN: This is correct.

MR. MOOCK: And at the time the bond issue was passed those allocations, of course, were in the applications which were then I think still with the California Water Commission and had not been assigned?

MR. SORENSEN: That is correct, they were still a matter of--the hearing hadn't actually occurred.

MR. MOOCK: Although the applications had been amended to set forth these allocations of water?

MR. SORENSEN: They were in the applications at that time.

MR. MOOCK: And then we had the signing of the contract between the Department of Water Resources and the Metropolitan Water District and the bond election two or three days later or four days later and then within 30 days Metropolitan Water District was before the California Water Commission asking for the removal of those applications, is that not correct?

MR. SORENSEN: They indicated their position as being one that would ask that they be removed and be in effect taken clear out, and at the hearing in effect this is what happened, that the allocations, while they were left in as far as their original wording was concerned, there was a phrase added or a sentence or a provision whereby these allocations would have no effect in the event that the Department were to make other contracts.

SENATOR COBEY: Mr. Chairman, may I request that that Water Commission resolution be made part of our record of today's

proceeding?

MR. MOOCK: I believe it is Resolution or Order No. 91 of the Water Commission, Senator, and I believe also it is a matter of record and probably you are all acquainted with the fact that the Water Commission at its meeting in January agreed to reconsider this particular clause that in effect eliminated these allocations, and the reason we go into that is although the Legislature can't do anything in that regard, I believe that the parties interested in the San Joaquin Valley can and are doing something in regard to getting these allocations retained in the applications assigned to the Department of Water Resources. That will afford some protection for the San Joaquin Valley.

SENATOR COBEY: Did you suggest that the Legislature could do nothing about this?

MR. MOOCK: I'm not too familiar with the legislative processes, Senator Cobey, and I don't know whether it would be proper for this Committee to pass a resolution urging the California Water Commission to rescind their action in making these applications subject to this contract between the Department of Water Resources and the Metropolitan Water District. I would like to see that, but I don't know whether that is within your powers.

CHAIRMAN TEALE: I might suggest this is Valentine's Day, and I don't know whether we would get one of those resolutions passed today.

SENATOR RICHARDS: Can I interrupt merely on this one question. I'm confused. If the two parties before us say

that they are not asking, nor do they expect this to be material in regard to legislative action, is this then in the nature of an appeal of a decision of the Department of the State of California? In other words, what is the materiality of the presentation we have just heard?

MR. SORENSEN: Senator Richards, the point and the reason that it was brought up is that in considering the contract, it is our position that the negotiating period is too short. We note that one of the reasons you might say that we weren't more concerned with this earlier was the fact there were area allocations in the applications for water which were going to be those which would make up the water that was available under the Feather River Project.

SENATOR RICHARDS: Because those have been removed irrespective of your satisfaction or lack of it at the hearing, the fact is they have been removed and you therefore find that as an extra obstacle which makes it material, the limitation that now exists in the contract, is that it?

MR. SORENSEN: This in effect--

SENATOR COBEY: Objectionable rather than material.

MR. SORENSEN: This would be right.

CHAIRMAN TEALE: Senator Miller.

SENATOR MILLER: No questions.

CHAIRMAN TEALE: Senator Slattery?

SENATOR SLATTERY: No questions.

CHAIRMAN TEALE: Senator Dolwig?

SENATOR DOLWIG: No questions.

CHAIRMAN TEALE: Senator Christensen?

SENATOR CHRISTENSEN: No questions.

CHAIRMAN TEALE: Thank you very much, Mr. Sorensen.

SENATOR MILLER: Mr. Chairman, I have a comment that I would like to make for the record. During the testimony of Mr. Bottorff there was a suggestion made that Mr. Bottorff's problem was to purchase water at the lowest possible figure and that was really his problem. My comment is I question whether that is really the problem, buying at the lowest possible figure. The question is, is the lowest possible figure the lowest amount for which he can buy it, is that a price that the agricultural interests in his area can pay and remain competitive. So that lowest possible figure doesn't solve the problem. It isn't just a question of someone trying to make a good bargain or trying to make a good contract.

CHAIRMAN TEALE: I would like to refer you back to the testimony of the Kern County Land Company at a hearing three years ago.

SENATOR MILLER: I'm sorry, I missed that.

CHAIRMAN TEALE: We will now call on a group of witnesses who represent the East Bay Counties, Mr. Herbert Crowle, Director of Public Works, Alameda County; Donald Currilin, Santa Clara County Flood Control and Water Conservation District, and Mr. Jack Port, Contra Costa County Water Agency. I'm going to ask you gentlemen to come up in a group and we will recess the hearing at exactly 12:30. You can divide your time as you like.



MR. CROWLE: My name is Herbert Crowle, Director of Public Works, Alameda County. On my right is Donald Currllin, Manager-Counsel, Santa Clara County Flood Control and Water Conservation District, and on my left is Jack Port, Executive Secretary, Contra Costa County Water Agency.

I might say that a portion of southern Contra Costa County is in the South Bay Aqueduct area, and a much larger portion of Contra Costa County lies in the Delta Area, of course, and the effects in these two parts of Contra Costa County are not necessarily the same. Therefore we have divided our presentation into two parts. The first part is the statement which I will read in behalf of the three counties pertaining to the effects on the South Bay Aqueduct area, and the second part will be read by Mr. Port, which is a statement in behalf of Contra Costa County.

The following statement has been prepared by a technical committee appointed by the Boards of Supervisors of the counties of Alameda, Contra Costa and Santa Clara to study methods of repaying the costs of providing water to the South Bay Aqueduct area within the three counties.

In accordance with your Committee's request, the statement has been prepared to present comments upon the questions which the Committee has asked the State Department of Water Resources to answer, pertaining to the contract between the Department of Water Resources and the Metropolitan Water District of Southern California, and to indicate the effects of the contract on the South Bay Aqueduct area. Some of the questions are not directly

applicable to the South Bay Aqueduct area, and others could only be answered by the Department of Water Resources. Therefore, some of the questions are not answered herein.

The written comments which follow are numbered to correspond to the numbers of the questions asked by the Committee. To save time and space, the questions themselves are not repeated herein.

Question No. 1 was, "What is the rationale of including San Luis Dam and the aqueduct from the Delta to the dam in the conservation facilities for the purpose of cost allocation?"

Our comment on that is:

1. The Department of Water Resources gave a detailed explanation of the use of the San Luis Reservoir as a conservation feature. Using the same logic, the Del Valle Reservoir may be considered as a conservation facility serving a similar function for the South Bay Aqueduct as the San Luis Reservoir does for the California Aqueduct and the area south of San Luis. For this reason, it appears that consideration should be given to including in the Delta Water Charge that portion of the cost of the South Bay Aqueduct between the Delta and Del Valle Reservoir and that portion of the cost of Del Valle Reservoir allocated to water conservation.

1(a). We have nothing to add relative to this question.

Question 1(b) was, "What would be the reduction in cost to users in the South Bay Aqueduct area if these conservation facilities on the California aqueduct were removed?"

The Department of Water Resources reply to question 1(b)

indicates that removal of the costs of the California Aqueduct allocated to water conservation from the Delta Water Charge would result in a reduction of cost to South Bay Aqueduct water users of \$3.20 per acre-foot until December 31, 1969. Such removal of such costs of the California Aqueduct from the Delta Water Charge would, therefore, appear to be favorable to the water users in the South Bay Aqueduct area.

1(c). We are not in a position to answer this question.

1(d). We are not in a position to answer this question.,

Question No. 2: "Is there any significance in this connection in the fact that Oroville Dam and related facilities are put in a different subsection of Section 12934 of the Burns-Porter Act than San Luis Dam, which was grouped with the aqueduct facilities?"

Apparently, the intent of the Burns-Porter Act is that the California Aqueduct and the San Luis Reservoir are part of the aqueduct system. Our interpretation has been that the aqueduct system constitutes the transportation facilities, and this interpretation was evident in the proposed contract principles which we submitted to the State last year.

3. We have no comment on this question at this time.

Question No. 4, "Since agricultural use is to bear the main burden of reduction in shortage years, could not a price differential to agricultural use be allowed?"

Although there is substantial use of water for agricultural purposes in the South Bay Aqueduct area at the present time, such use is expected to be relatively small under conditions of full

development of the aqueduct supply. Therefore, the problem posed by the question should not have a serious effect in the South Bay Aqueduct area. It is recognized, however, that this matter has greater significance in other parts of the State.

4(a). We are not in a position to answer this question.

4(b). We are not in a position to answer this question.

4(c). We are not in a position to answer this question.

5. We have not made such studies and are therefore not in a position to comment on this question.

Question No. 6, "Who determined what legislation is inconsistent with terms and conditions of the Metropolitan Water District contract or what legislation would 'require changes' in the contract as described in Article 2?"

In the case of a dispute between the State and the local contracting agency, the question would have to be submitted to a court of competent legal jurisdiction.

Question No. 7, "Article 4 seems to make the contract perpetual at the option of Metropolitan Water District. Shouldn't there be some cutoff provision in case of radically changed conditions or radically new methods of developing water?"

This provision appears to be satisfactory from the standpoint of the local contracting agencies.

Question 7(a), "Shouldn't the State have some option as to continuing service?"

No. The State should be obligated to continue to serve water in the same quantity and quality, from whatever source, as long as



the contracting agency meets its contractual obligations and desires to continue to receive service. On the other hand, the local contracting agency should not be obligated to continue to take water after all capital costs of the project facilities have been repaid.

Question 8: "Who determined the amount in reduction of deliveries to Metropolitan Water District in the event any constituent agency of Metropolitan Water District elects to take delivery under separate contracts?"

Once the State has entered into a repayment contract with a local agency, the State should not enter into such a contract with any other local agency which lies within the first local agency.

Question 9: "Would not the cutoff date of December 31, 1963, in Article 8 work against the interests of undeveloped or slowly developing areas who may not, on that date, be able to contract for ultimate needs?"

Yes. Undeveloped or slowly developing areas might not be able to contract for their potential water needs by the cutoff date. However, it appears that some cutoff date is necessary. The date of December 31, 1963, would not present any apparent difficulty in the South Bay Aqueduct area. If extension of the cutoff date by one year would help other areas to contract for their needs, such an extension should be favorably considered by all concerned, provided it would not delay construction and completion of the project.

9(a): Could not this situation affect the feasibility of the project, since Metropolitan Water District is allowed, not

required, to pick up surplus?"

It would not have any appreciable effect on the feasibility of the South Bay Aqueduct. However, as indicated by the Department of Water Resources, the Delta Water Charge could be increased.

9(b). The Department has answered this question by citing the appropriate language.

10. We have no comment on this question.

11. We have no comment on this question.

Question No. 12: "Does Section A of Article 16 preclude sales of class II water?"

No. The water described on page 21/1 of the contract appear to be the equivalent of Class II water. It is possible that there may be a market for some of such water in the South Bay Aqueduct area.

Question 13: "Again, in slowly developing areas as may exist in the San Joaquin Valley isn't the 75 percent requirement in Article 17(d) too restrictive?"

The 75 percent requirement does not present a problem on the South Bay Aqueduct itself. However, it might affect the total State project and as such, could affect the costs to the South Bay Aqueduct area.

13(a). We are not in a position to answer this.

Question 13(b): Does this restriction mean also that construction of Oroville Dam would be delayed until 75 percent of its power is contracted for?"

It is our understanding that Oroville Dam would not be

delayed as a result of the 75 percent requirement.

13(c). We have nothing to add relative to this question.

14. We have no comment on this question.

15. We have nothing to add relative to this question.

16. The Department has answered this question.

Question 16(a): "Should not such municipal uses as watering of lawns, parks, golf courses--be curtailed before agricultural users take a full 50 percent cut?"

Under conditions of water shortage, certain municipal uses such as those mentioned in the question should be curtailed by appropriate action and education within the distributing agencies. There is probably no practical way to provide for this by contract, however.

17. This is a legal question on which we would not attempt to comment.

Question 18: "The same subparagraph (1) provides for downward adjustments resulting from reduced entitlements. Does this forecast a deficit in repayment totals since no compensating reduction in cost of works is involved?"

Our interpretation is that it would not forecast a deficit in repayment totals.

19. We have no comment on this question.

20. We have no comment on this question.

Question 21: "What effect on the Delta Water Charge would the 'staged' construction of Oroville Dam have?"

It is our understanding that the State plans to construct

the complete Oroville Dam and Reservoir as soon as possible, without staging. As of this date, we have not been informed of any objections to this plan from the South Bay Aqueduct area, and it is assumed that the reaction from this area is generally favorable.

21(a). We are not in a position to answer this question.

21(b). Since we are not familiar with the charges or ability to pay, of such upstream users, we are not in a position to make any suggestions.

22. This question has been answered by the Department.

23(a). We have nothing to add relative to this question.

Question 23(b): "Were potential agricultural users consulted when this formula was arrived at in negotiations with Metropolitan Water District?"

Not to our knowledge. The formula does not appear to have any effect on the allocations of cost of the South Bay Aqueduct.

23(c). We are not in a position to answer this question.

Question 24: "Again state your views on the possibility that the potential contractor for 'excess capacity' as described in (d) of Article 24 does not have the ability to advance funds for providing the excess capacity."

It appears that if a contractor wishes "excess capacity" he must be prepared to advance funds for providing such capacity. If such funds are not available, the "excess capacity" will not be provided.

Question 25: "In connection with Article 29 what appeal do contractors have if they believe the charges involved have been calculated inaccurately or improperly by the Department?"



In any dispute, the contractors have the right of appealing to a court of competent legal jurisdiction.

That concludes the first part of our statement, Mr. Chairman, and the second part will be given by Mr. Port.

CHAIRMAN TEALE: Mr. Port.

MR. PORT: Senator Teale and Honorable Committee Members, the Contra Costa County Board of Supervisors, ex-officio the Board of Directors of the Contra Costa County Water Agency, is grateful for the opportunity once again to present its views to your honorable Committee. This "supplemental statement" is presented in order to bring to the Committee's attention deficiencies and defects in the State's "standard" contract which may not affect Alameda and Santa Clara Counties, but are of substantial significance to Contra Costa County.

We contend that these deficiencies would not have been framed into the contract if this county, and other interested agencies had been given the opportunity to participate in its preparation. We have attached to this statement a copy of a draft of a proposed contract as evidence of our willingness to cooperate with the State. This draft was jointly submitted to the Department of Water Resource on March 10, 1960, by the Counties of Alameda, Contra Costa and Santa Clara. Also enclosed is a "chronology" of efforts made by the three counties to obtain a repayment contract for South Bay Aqueduct water. Receipt of the three-county contract draft was acknowledged perfunctorily by the State. (Copy of the acknowledgment attached to this statement). No further word has ever again been received

from the State with respect to approval or disapproval of the concepts incorporated in the draft of this three-county contract.

The following excerpts from the Staff Report attached to the three-county contract draft demonstrate that the three counties recognized that broad and complex concepts would be involved in writing a "standard" contract.

"Because the water problem is of state-wide as well as local concern, it is of the utmost importance that any contract written be broadly enough based and sufficiently adaptable so that a uniform state program may be developed. Due to the complex policy and technical questions involved, the draft submitted herewith should be viewed as tentative and subject to revision and addition.

"Although the State is currently preparing a master contract which, when completed, will be made available to all agencies simultaneously, the Staff believes that the attached contract embodies all the basic principles which would best serve the interests of the areas of benefit within the three counties, and that these principles should be considered by the State in drafting the uniform contract."

Legislative approval of the contract (between the State Department of Water Resources and the Metropolitan Water District of Southern California) in its present form, can produce a substantial adverse effect upon the economy of Contra Costa County. We have attached a letter from the Department of Water Resources dated November 22, 1960, which states that the standard contract between the State

and the MWD of Southern California had been signed and will be used as a basis for contracts with all other agencies. Should this form of a contract be tendered to provide water to users in Contra Costa County, whether in the South Bay Aqueduct service area or in the Sacramento-San Joaquin Delta area, certain provisions of the contract would have to be modified and others added before a contract could be consummated between the Contra Costa County Water Agency and the State. We have, under the following points, stated as concisely as possible, the more important deficiencies of the contract which adversely affect Contra Costa County.

I. DETERMINATION OF MINIMUM PROJECT YIELD

In view of the fact that the Contra Costa County Water Agency cannot sign a contract which would benefit one portion of the County to the detriment of another portion; we recommend that the following provisions be made part of all contracts for State water, and be taken into account in determining "minimum project yield":

- A. No water shall be diverted under this contract at any time when the mean tidal cycle surface zone salinity of chlorine ion concentration exceeds 350 parts per million parts of water at a salinity gaging station to be maintained at the intake of the Antioch municipal water works in the City of Antioch.
- B. No water shall be diverted under this contract at any time during the 150 days following the commencement of winter run-off when the mean tidal cycle surface zone salinity of chlorine ion concentration exceeds 150 parts per



million parts of water at a salinity gaging station to be maintained at the mouth of the dredged intake channel of the California Water Service Company which serves its diversion works on Mallard Slough. As used herein the words "commencement of winter run-off" shall be deemed to mean the first day after December 1 of each year when the mean tidal cycle surface zone salinity of chlorine ion concentration at the mouth of said intake channel is 150 parts per million parts of water or less, but not later than the following February 1.

C. If an overland system is constructed which would supply water to users at no greater cost in lieu of the above provisions, they will become null and void.

## II. QUALITY REQUIREMENTS FOR PROJECT WATER

All water required to be delivered pursuant to this contract shall be of such quality as not to exceed 150 parts per million of chlorine; however, in the event that the chloride content shall exceed this amount, the obligations of the County Agencies to the State to pay for such amount of water shall be reduced in the Delta Water Rate by one per cent (1%) per part per million in excess of said level. (The three-county draft of the proposed contract forwarded to the State March 10, 1960, contains this provision).

## III. INEQUITY OF OPTION TO PURCHASE UNCONTRACTED PORTION OF MINIMUM PROJECT YIELD, WITHOUT COMMENSURATE CONSIDERATION, BY METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

It has been our understanding that the State Water Resources Development System has been conceived to benefit all sections of

## IV. QUALITY REQUIREMENTS FOR PROJECT WATER

All water required to be delivered pursuant to this contract shall be of such quality as not to exceed 150 parts per million of chlorine.



the State.

Yet the option provided in the standard contract to the Metropolitan Water District of Southern California permits the District's purchase of all uncommitted "project water" after 1964, even though the District at that time will not have provided one cent toward meeting the costs of conservancy features, and is not obligated to pay for these features prior to 1972.

This option is a dangerous provision which may very easily preclude areas slow-to-develop from realizing their potential, and theoretically may provide the Metropolitan Water District of Southern California with the opportunity to extend its boundaries to Oroville. It is unrealistic to assume that slow-to-develop areas could, in the future, campaign for construction of parallel facilities as a State project, and find votes among users already being served.

In view of the above, we recommend the option to the Metropolitan Water District of Southern California be revised to permit purchase after 1965, of that excess capacity in the transportation facilities which will allow a beneficial use of water, limited to serve an area lying entirely south of the Tehachapies.

#### IV. CONSERVANCY CHARGE (DELTA WATER CHARGE) AND TRANSPORTATION CHARGE

The Department of Water Resources has chosen in its framing of the standard contract and in its procedure for establishing water charges to place facilities constructed under the State Project into either one of two categories, namely, "conservation"

and "transportation".

Payment for the Delta Water Facilities and the San Luis Project have, under the terms of the standard contract, been designated as conservancy charges. This determination by the State ignores the fact that construction of Delta Water Facilities are proposed so that water can be transported across the Delta and that the San Luis Project will function as a transportation facility as well as a conservancy facility.

Therefore, this County recommends the following provisions be included in the contract:

A. That the Delta Water Charge be separated into two charges as follows:

1. Charge for water to the Delta.
2. Charge for water from the Delta.

B. That all State-constructed reservoirs, including the San Luis Project, those proposed to serve the South Bay Aqueduct service area (Doolan Canyon, Airpoint and Del Valle Reservoirs), Avenal Reservoir, any reservoir built in the San Gabriel and in the Tehachapi Mountains, or other reservoirs constructed elsewhere downstream from the Delta, are conservancy features and be constructed to their maximum conservancy capacity.

C. Or that a "conservancy charge" and "transportation charge" be determined for each facility constructed under the State project and properly allocated to the appropriate user.

V. RESPONSIBILITY FOR COLLECTION AND DISPOSITION OF SURCHARGE FUND

We find a definition in the contract of surcharge rate for

excess use of project water, but nowhere do we find a mechanism for collection of surcharge revenues or how they will be applied.

The reluctance on the part of the State to invite participation of other agencies affected in their negotiations on the "standard" contract with the Metropolitan Water District of Southern California and the deficiencies and defects of the contract have been a great disappointment to Contra Costa County.

We would like to close our statement by thanking your honorable Committee again for the opportunity to present our views

CHAIRMAN TEALE: Thank you, Mr. Port. I'm sure that you gentlemen are sorry that we will not have time to question you. It may be that the Committee will find it desirable to hold further hearings on this same subject matter and if we do, we would like to ask you to come back for questioning, and the Committee is adjourned at this time.

(Thereupon the hearing was adjourned.)

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REPORTER'S CERTIFICATE

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This is to certify that I, ALICE BOOK, a Certified Shorthand Reporter, was present at the time and place the foregoing proceedings were heard before the Senate Fact Finding Committee on Water, California State Legislature, Friday and Tuesday, February 10 and February 14, 1961, at the State Capitol, Sacramento, California, and that as such Reporter I did take down said proceedings in shorthand writing, and that thereafter I caused the shorthand writing to be transcribed into longhand typewriting, and that the foregoing pages beginning at the top of page 1 to and including page 236 hereof, constitute a true, complete, accurate and correct transcription of the aforementioned shorthand writing.

Dated this 22nd day of February, 1961.

  
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Certified Shorthand Reporter

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ADDITIONAL STATEMENTS SUBMITTED AND ACCEPTED FOR THE COMMITTEE'S  
RECORD FOLLOW:

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT  
384 Fourth Street  
San Bernardino, California  
February 27, 1961

Honorable Stephen P. Teale, Senator  
Chairman of the Senate Fact Finding  
Committee on Water  
State Capitol Building  
Sacramento, Calif.

Dear Senator Teale:

Enclosed herewith is the Statement of the San Bernardino Valley Municipal Water District regarding our position on the Feather River Project.

We would be willing to appear and make this or a similar statement orally at any future hearing in which you consider our presence necessary.

Very truly yours,

SAN BERNARDINO VALLEY  
MUNICIPAL WATER DISTRICT

HUGO W. WILDE  
General Manager

HW:br

Enc.

## Statement of the San Bernardino Valley Municipal Water District

TO: The Senate Fact Finding Committee on Water

RE: Contract between the State of California, Department of Water Resources and the San Bernardino Valley Municipal Water District

### INTRODUCTION

The San Bernardino Valley Municipal Water District was organized under the Municipal Water District Act of 1911. It lies in the Upper Santa Ana Valley in the western part of San Bernardino County, California. The District has an area of about 147,000 acres of which 133,000 are valley lands and 14,000 acres are generally undeveloped hills and mountains. The northern edge of the District is bounded by the San Gabriel Mountains, and the eastern edge by the San Bernardino Mountains; low hills lie along the southern boundary; the western edge is bordered by arid valley lands.

The area is characterized by warm, dry summers and, occasionally, cool, wet winters. Long range average annual precipitation for the District is about 17 inches and ranges from less than 12 inches along the southern border to more than 36 inches in the upper mountains. Precipitation is variable but tends to occur in a series of wet and dry periods. The average annual temperature is about 62°F; extremes range from 18°F to 116°F. This District needs supplemental Northern California Water, as provided for by Senate Bill No. 1106.

The San Bernardino Valley Municipal Water District, on September 24, 1960, became the first District in the State to accept the terms of the then proposed water supply contract with the State. On that date, the District wired Governor Edmund G. Brown that it "is ready and willing to sign it (the contract) at your earliest convenience." None of the changes negotiated into the contract, subsequent to that date, adversely affected the District and the final contract was signed on December 30, 1960.

### The District's desires concerning the contract and views on some present proposals

The contract with the San Bernardino Valley Municipal Water District is essentially the same as the contract with the Metropolitan Water District of Southern California and, since an excellent analysis thereof was presented to the Senate Committee by the State officers on February 10, 1961, we will not restate it here.

The board of directors authorized, and later ratified, the execution of the contract in the belief that it was fair to all parties, economically feasible and essential to the needs of both the rural and urban population of the District. To date, there has been no change in conditions and no showing made of unfair advantages taken by, or given to, any group or area which brings the least dissatisfaction to the District. Specifically, the arguments purporting to delay the construction of the project by an extension of time within which to contract, and the argument for the creation of a favored class of landowners, is repugnant to the interests of this District and also to our view of a fair assumption of cost repayment.

A) The "cut-off" date of December 31, 1963.

This District has no objection to the statements made by the Department of Water Resources in its answer to question numbered 9, at pages 10 and 11, of its answer to the Senate Committee's questions, submitted to the department on January 24, 1961. We believe that a definite cut-off date is necessary in order to finally determine the size of the facilities necessary to the project; and, that any extension of that date would necessarily delay construction of project facilities, with a resulting delay in urgently needed water delivery. This District can ill afford any such delay; we have a water shortage now and it cannot be expected to be any less severe in the future. Our only source of a firm supplemental water supply, necessary to the survival and development of our communities, is this project.

Our reason for opposing the extension of time within which to contract is as above stated; we cannot afford the resulting delay. We face a water shortage now and any delay in the present timetable would make domestic water rationing probable. Furthermore, it seems ridiculous that any progressive area should need an extension of time. The Feather River Project has been talked about for several years; Senate Bill 1106 was adopted in 1959 and there now remain nearly three years before the "cut-off" date of December 31, 1963. Surely there has been time and there remains time for any group to organize and negotiate a contract before December 31, 1963, if it is in good faith seeking to do so. The California Codes contain twenty-seven different types of districts, all having the right to store and distribute water. It seems that there should be at least one of these districts suitable to the needs of any one particular area, except that no district formation will correct purely obstructive thinking.



B) The Landowners subsidy.

It has been suggested, with apparent seriousness, that a proper cost allocation would be to compute the cost of the facilities to the municipal users only as though no agricultural water were to be delivered, and then to allocate only the additional facility costs required to, and for, the agricultural users. This method would be like approaching a taxi cab and offering to pay for the gasoline to be used instead of the regular fare. Like the landowner, the pedestrian could always argue that all other costs would be expended whether he used the service or not. If successful, this argument could be next best to a permanent position on the relief rolls.

It is interesting to note that those who argue for a landed preference, also argue against the surcharge provisions which do not affect any holding under 160 acres. Whether the land holdings be large or small, however, this District cannot support any provision to convert waste land into high priced farm land at the expense of persons who own only such land as is necessary for a residence. In these days of federal farm subsidies and municipal unemployment, it does not seem probable that landowners are in a financially inferior position to municipal residents. In placing the cost of resulting increase in land values upon the household budget, the theory seems to be that the householder will pay it because he must have water to live. The theory is neither equitable, fair, no just.

The position of this District is that the contract and the applicable law should be left as it is.

Respectfully submitted,

SAN BERNARDINO VALLEY  
MUNICIPAL WATER DISTRICT

HUGO W. WILDE  
General Manager and  
Assistant Secretary



PLUMAS COUNTY BOARD OF SUPERVISORS

Quincy, California

Senator Stephen P. Teale  
State Capitol  
Sacramento, California

Dear Senator Teale:

At the recent hearings held by your Committee on February 10 and February 14 with respect to the terms of the water delivery contract between the State of California and the Metropolitan Water District of Southern California, your Committee heard from certain local interests who contemplate entering into a contract with the State for delivery of water from the State project. You also indicated that the Committee would receive further presentations for the records of the Committee from other interested parties within a reasonable period of time by way of written statements. This letter is intended to be such a statement on behalf of Plumas County interests and will relate primarily to problems which will be encountered in water service contracts with the State for delivery of water from Frenchman and Grizzly Valley projects in the Upper Feather River service area.

The Last Chance Creek Water District and the Plumas County Flood Control and Water Conservation District representatives have over the last few months met with Department of Water Resources representatives in an effort to initiate contract negotiations between the State and local interests for project water from the Frenchman and Grizzly Valley Projects. Plumas County interests are awaiting the form of a contract from the Department of Water Resources which would spell out in detail what is to be expected from the local interests in connection with contracting for water from the Upper Feather River features of the State project. We believe that there will need to be substantial differences in any contract which is offered to water users from the Frenchman and Grizzly Valley Projects over contracts offered to others in the southern portion of the State, in view of the fact that service to Plumas County users will not require participation in the large aqueduct system. Under the principles adopted by the Governor in January of 1960, it is contemplated that water would be available to water users in our County at the Delta Pool Rate.

Examination of the State-Metropolitan Water District contract gives us much concern, however, if some of the features of that contract should be incorporated in contracts offered by the State to Plumas County interests. Some of these items are as follows:

- (1) We understand that the Delta Pool Rate has been computed to be approximately \$3.50 per acre-foot including maintenance and

operation charges and also the repayment of costs of San Luis Reservoir and certain facilities to divert water into that reservoir. While Plumas County interests may agree in principle with the concept of the Delta Pool Rate pricing structure, we do not agree that the rate should include works below the Sacramento-San Joaquin Delta. We believe that any work south of the Delta should be properly charged as a State transportation facility and not to the users in the Upper Feather River service area who cannot possibly benefit thereby. Elimination of San Luis Reservoir and related facilities from the Delta Pool Rate would reduce the cost of water to our area to considerably less than \$3.50 as originally quoted by the Department of Water Resources. Such a modification of the Delta Pool Rate would not violate the principles set forth by the administration under its contracting principles of January 20 of this year and would insure that water would be available at a figure within the ability of our water users to repay.

(2) There is a severe problem to our area if we accept a contract with the State which does not have some limit on future increases in the Delta Pool Rate. In this connection it should be apparent that areas in northern California, and in particular our County, will be paying a price for water which almost equals their ability to pay. Under the Delta Pool Concept the Delta Pool Rate may vary as additional projects are added in the north coast. It is conceivable that such additional projects might increase the Delta Pool Rate to a level beyond the ability of areas in Plumas County to pay. We believe that contracts with Plumas County interests will have to provide either an upper limit in the Delta Pool Rate or in the alternative will have to exclude us from incremental costs in the Delta Pool Rate which might be brought about by additional projects on the north coast.

(3) The surcharge for water to be delivered to lands in excess of 160 acres in single ownership or 320 acres owned by a married couple is based upon the theory that these acreages represent an economic farm unit. We think it obvious, however, that these rigid limitations in fairness cannot be applied indiscriminately throughout the State. An economic farm unit in Plumas County is not the same as an economic farm unit in the southern San Joaquin Valley or in San Diego County. The economists tell us that in Sierra Valley, where the economy is and will always be limited to activities such as cattle raising because of the short growing season and other problems, an economic farm unit will consist of approximately 1000 acres. On the other hand an economic farm unit in areas in southern California, where citrus or avocado are the principal crops, consists of much less than 160 or 320 acres. Thus, there must be flexibility in establishing the acreages which are subject to surcharge. It is instructive to note that under Federal reclamation law, which originated the concept of the 160 or 320 acre limitation, Congress has found it necessary to modify this limitation in areas where conditions of climate and elevation make it realistically inapplicable.

We are very concerned over the answers supplied by the Department of Water Resources to the questions of your Committee at the time of the Department's presentation on February 10. Particularly important to our area is the answer to questions 21a and 21b of your Committee which seem to indicate that the State is not concerned with the service of water to Sierra Valley from the State authorized facilities at Frenchman and Grizzly Valley Projects. In its answer to question 21a the Department points out that the Delta water charge would be lower in most cases than the cost per acre-foot to develop local water projects. Such a statement, while undoubtedly true, seems to be at variance with previous statements that upstream development would be considered as an integral part of construction at Croville Dam under basin-wide development as was formulated for the Sly Park Project of the Bureau of Reclamation. Upstream development must be integrated with other major project features if provisions are to be made to supply water to these areas. In light of the Department's answers to these questions we are somewhat fearful that unless there is some recognition of the problems of these upstream areas their participation from the State water development program may be foreclosed.

There may be other matters upon which Plumas County interests should comment at this time. However, it would appear more appropriate to withhold these comments until we have an opportunity to examine the draft of contract which the State has indicated it will furnish to us in the near future.

We appreciate the opportunity of submitting this statement for the record in the proceedings of your Committee.

Very truly yours,

E. J. Humphrey, Chairman  
of the Board of Supervisors